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सं. 33] नई दिल्ली, सितम्बर 5—सितम्बर 11, 2021 शनिवार/ भाद्र 14—भाद्र 20, 1943
No. 33] NEW DELHI, SEPTEMBER 5—SEPTEMBER 11, 2021, SATURDAY/BHADRA 14–BHADRA 20, 1943

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

श्रम और रोजगार मंत्रालय

नई दिल्ली, 18 अगस्त, 2021

का.आ. 602.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंदिरा गांधी राष्ट्रीय कला केंद्र , सदस्य सचिव, सेंट्रल विस्टा मेस नई दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और श्री चंद्र मोहन शर्मा, सुभाष नगर, नई दिल्ली, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, नई दिल्ली-I के पंचाट (संदर्भ संख्या 174/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 18.08.2021 को प्राप्त हुआ था।

[सं. एल-42011/36/2017-आईआर-(डीयू)]
डी. के. हिमांशु, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 18th August, 2021

S.O. 602.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 174/2017) of the Central Government Industrial Tribunal-cum-Labour Court-I, New Delhi, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Indira Gandhi National Center for Arts through Member Secretary, Central Vista Mess, New Delhi and Shri Chander Mohan Sharma, Subhash Nagar, New Delhi Worker which was received along with soft copy of the award by the Central Government on 18.08.2021.

[No. L- 42011/36/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 174/2017

Date of Passing Award- 5th August, 2021

Between:

Shri Chander Mohan Sharma, S/o Sh. Bhisham Pitamah Sharma,
R/o 17/193, Subhash Nagar,
New Delhi-110027 ... Workman

Versus

Indira Gandhi National Centre for Arts
Through its Member Secretary, Central Vista Mess,
Building Janpath,
New Delhi-110001 ... Management

Appearances:-

Shri Rajiv Aggarwal (A/R) : For the Workman.

Shri Gaurav Kumar Pandey (A/R) : For the Management

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Indira Gandhi National Centre for Arts and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L- 42011/36/2017 (IR(DU) dated 05.06.2017 to this tribunal for adjudication to the following effect.

> "Whether the workman i.e Shri Chander Mohan Sharma S/o Sh. Bhisham Pitamah Sharma is entitled to be reinstated with the management i.e. Indira Gandhi National Centre for Arts, New Delhi with all consequential benefits? If not, then what relief the workman is entitled to ?''

The claimant, as stated in the claim petition was appointed as a LDC w.e.f 23.012.1991 with the management i.e. IGNCA and posted under the Building Project Committee which is one of the different divisions of the management IGNCA. In the year 1996 a post of Stenographer in Grade-D in IGNCA was created and in order to fill up the post, the management asked the Employment officer, Employment Exchange Dariyaganj to provide a list of suitable candidates for selection and appointment to the post. The claimant also applied for the said post as a departmental candidate. Like other candidates he also appeared for the shorthand and typist pursuant to an order dated 05th July 1996 communicated to him. All total 13 candidates had appeared for that skill test but the claimant alone qualified in the test. He was then promoted to the post of stenographer grade-D in the pay scale of 1200-1400 by office order dated 14.08.1996 and transferred to the administration pool from the Building Project Committee by office order No. 122/2006 dated 13.12.2006. The claimant worked in the administration pool as a stenographer in Grade-D for 10 years w.e.f 14.08.1996. On completion of 10 years of service in that post w.e.f 13.08.2006 he claimed grant of ACP in pay scale of Rs. 6500-10500. Since the

management did not take any action he raised a dispute before the conciliation officer in the year 2008 and notices dated 25.09.2008 and 21.10.2008 were served on the management to participate in the conciliation. Being aggrieved by the action of the claimant in raising a dispute for grant of ACP, the management terminated his service w.e.f 18.02.2009. While doing so the management, though had the knowledge about the pendency of the conciliation proceeding, passed the illegal order of termination without taking prior permission of the appropriate authority. Not only that while passing the order of termination the provisions of section 25-F, 25-G and 25-H and 25-N were not complied which makes the order illegal. The workman filed a writ petition before the Hon'ble High Court of Delhi in the year 2009 but the same was dismissed as withdrawn vide order dated 01.04.2016. The Hon'ble High Court, while dismissing the writ petition gave liberty to the claimant to raise an Industrial Dispute. The claimant then approached the Labour Commissioner and a conciliation proceeding was initiated. The conciliation since failed the appropriate government referred the matter for adjudication as per the terms of the reference.

Being noticed the management IGNCA appeared and filed written statement denying the stand by the claimant. The specific stand taken by the management is that the IGNCA is functioning under the direct control and the management of the Ministry of Culture, Government of India. As such, the claim petition filed before this tribunal is not maintainable and it should have been filed before the Hon'ble High Court or CAT. The claimant is not a workman nor the respondent is an industry within the meaning of ID Act. He was never engaged by the IGNCA as its regular employee at any point of time nor he was given promotion to the cadre of stenographer Grade-D as claimed by him. The IGNCA had a Building Project Committee (herein after BPC) which was a temporary body constituted only for the specific temporary project under a plan scheme relating to the construction of the Building of IGNCA. This committee was overlooking the construction of the building complex of IGNCA. Subsequently the project was halted for want of fund and the work, by the order of the Government was transferred to CPWD.

However, the employees engaged under the BPC as temporary employees were retained in a cell called BP Cell. The payments to these BP Cell staff where being given through plan grant which is given for temporary and particular scheme involving temporary activities. The Director General audit, Central Revenue issued a letter wherein they had objected to the continuation of BP Cell beyond 01.04.2003 since the BPC was terminated in 2002. The IGNCA responded to the observation of DGACR and submitted that the retention of the employees of the erstwhile BPC is necessary for disposal of the pending large volume of papers and legal issues relating to BPC. But the same was not accepted by the DGACR, who objected to the same as wasteful expenditure. Thus, a meeting of the IGNCA trust was held on 22.05.2008 and approval was given to windup the BP Cell w.e.f 31.03.2008. The management has further stated that before the service of the claimant was terminated he was given the offer to work as a temporary employee on a consolidated salary. But the claimant did not accept the offer.

While denying its liability towards the recruitment process claimed by the claimant it has been stated that the same was initiated by the Building Project Committee a temporary body for temporary posts. The persons applying and appearing for the said post had enough knowledge about the nature of post for which appointment was proposed to be made. Not only that the letter written to the employment exchange inviting the names of eligible candidates had a clear mentioning that the persons shall be appointed against a temporary post. So far as the present claimant is concerned the management has stated that the claimant was never treated as a departmental candidate in the year 1996 for the post of Stenographer Grade-D. The entire exercise was illegally done to give back door entry to the claimant. Citing the judgment of the Hon'ble Supreme court in the case of **Secretary State of Karnatak vs. Uma devi**, the management has stated that the claimant cannot take the benefit of illegal appointment and the alleged promotion etc., since the same was done without following the due procedure and amounts to backdoor entry. It has further been stated that promotion in IGNCA is usually effected through DPC and temporary employees cannot be given promotion through BPC. Thus, the claim of the claimant is illegal. Respondent has also denied to the claim that the BPC is a division of IGNCA. The claim of the claimant that the service was terminated due to initiation of ID NO 40/2009 is also denied on the ground that the said Id was registered on 10.09.2009 and the service of the claimant was terminated much prior to that i.e. on 18.02.2009.

The other stand taken by the management is that the writ petition filed by the claimant was dismissed on merit and no liberty was ever granted by the High Court to raise the Industrial dispute. It has also been pleaded that ID 40/2009 is still pending for adjudication on the eligibility of the claimant for grant of ACP. Since, in that proceeding the status of the claimant is yet to be decided, the present proceeding is not maintainable and liable to be dismissed.

On these rival pleading following issues have been framed.

ISSUES :

1. Whether the reference made by the Appropriate Government is not legally maintainable in view of the various preliminary objections.

2. In terms of reference.

The claimant examined himself as WW1 and testified exactly in the line of the claim statement. He also tendered several documents in support of his oral testimony which have been marked in a series of WW1/1 to WW1/46. The management objected to the admissibility of the documents on the ground that these are not original documents. Similarly the management examined one of its undersecretary as MW1 who also proved a volume of document marked as MW1/1 (colly).

FINDING

ISSUE NO.1

The reference has been received for adjudication on the entitlement of the claimant for reinstatement into service on account of alleged illegal termination with consequential benefits. But the management has challenged the maintainability of the proceeding on the ground that another Industrial dispute bearing no. Id 40/2009 is pending for adjudication on the claim of the claimant for entitlement of ACP. In that Industrial Dispute the status of the claimant shall be adjudicated. Hence, this claim petition if adjudicated would lead to conflict of opinion. The Ld. Counsel for the management further submitted during course of argument that IGNCA is a department functioning under the supervision and control of the Ministry of Culture, Government of India. Thus, the dispute relating to its employee is maintainable either before the Hon'ble High Court or before the Hon'ble CAT and not before the Industrial Tribunal. The reference has been made by the appropriate government for adjudication. Moreover the management at one point of time is denying the status of the claimant as its permanent employee and at the other point of time canvassing that the proceeding should have been made before the High Court or CAT. The claimant has nowhere claimed to be a permanent employee of the management. Rather it has pleaded that he was appointed against a temporary post and the management without following the procedure of law laid u/s 25-F, 25-G, 25-H and 25-N terminated his service having knowledge that a dispute raised by him is pending before the conciliation officer. The argument on the maintainability as advanced by the management is thus, not accepted. This issue is accordingly decided in favour of the claimant.

ISSUE NO.2

In this claim the claimant has demanded his reinstatement solely on the ground that his service was illegally terminated without following the procedure laid down under law. The Ld. Counsel for the management strenuously argued that the claim for reinstatement is not possible since the claimant is trying to legalize his back door entry into the service of the management. He also argued that the management is functioning under a Trust with the direct supervision and control of the Ministry of Culture, Government of India. The M.C. Gupta committee report approved by IGNCA Trust and cabinet has decided that the staff strength of IGNCA shall not exceed 239 and there shall not be any regular appointment in Group-C and D post. It was further decided that for some temporary works some persons can be engaged on temporary basis. The claimant was appointed as such as Junior Clerk by the BPC in the year 1996. The records referred by the claimant clearly establish this fact. On abolition of the temporary building Project committee the claimant and other temporary employees of BPC where adjusted in a cell called BPCELL. But for the objection of the Director General Audit, Central revenue, Delhi, engagement of the claimant was brought to an end w.e.f 18.02.2009. Before that, he was offered a temporary engagement on consolidated salary but he refuse to accept the same. The management has specifically denied the claim of the claimant relating to appearance in the test of Stenographer Grade-D as a departmental candidate or promotion to the said post. The specific stand of the management is that the claimant was a temporary employee in a temporary committee and his service was coterminous with the termination of the committee. Some illegal exercises have been done to facilitate his back door entry into the employment cadre of IGNCA. While drawing the attention of the Tribunal to the judgment of **Secretary state of Karnatak vs. Uma devi** he submitted that this type of exercise resulting in backdoor entry has been disapproved by the Hon'ble Supreme Court and for the principle decided in that judgment, the appointment of the claimant as a stenographer Grade-D being illegal, his claim for ACP is also illegal. The management has specifically stated that the service of the claimant was brought to an end since the Director General Audit and Central Revenue objected to the same and the secretariat of the IGNCA accepted the observation. Hence, there was no necessity for complying with 25F, 25-G, 25-H and 25-N.

On behalf of the claimant several documents have been proved which include appointment letter of the claimant marked as WW1/40. Pursuant to this letter the claimant was appointed as a Lower Division Clerk on 23.12.1991. Initially his appointment was for 6 months which was renewed from time to time. The claimant has filed the copy of the service book marked as WW1/37 wherein, it has been mentioned that his appointment was in the post of Lower Division Clerk in BPC in the pay scale of 950-20-1150. The service book further shows that he was allowed annual increment and also crossed the efficiency bar (EB). Not only that there is an entry in the service book made on 01.08.1997 which shows that he was promoted to the post of stenographer Grade-D in the pay scale of 1200-2040 w.e.f 14.08.1996. The claimant has filed a document to prove that he was transferred soon after the promotion to the administration pool of IGNCA. The claimant has also filed the document

containing the list of 12 candidates sponsored by the Employment Exchange in which the name of the claimant was added as the 13 candidate for appearing in the shorthand and typist as the only in service candidate. The claimant has further stated that he is the only person who had qualified in the type & shorthand test and this fact has not been denied by the management. The termination letter has been relied upon by both the parties and marked as WW1/41. This document WW1/41 clearly indicates that the claimant was initially appointed as LDC in the Building Project Committee in a temporary capacity. Subsequently he was promoted as Steno GRADE-D and continued to hold the same post on 31.03.2008. The executive committee of IGNCA pursuant to objection raised by C&AG of India, passed resolution to discontinue the Building Project Cell and accordingly the service of Chander Mohan was terminated w.e.f 08.02.2009. This order of termination marked as WW1/41 nowhere mentioned about the compliance of the provision of 25-F, 25-G, 25-H and 25-N of the Id Act.

For adjudication of the current dispute the only question to be decided is if the termination was illegal and for the same claimant is entitled to reinstatement with consequential benefits. The management witness during cross examination has clearly admitted that no notice, notice pay, in lieu of notice or service compensation was offered to him. He also admitted that there is nothing on record to show that any seniority list of the stenographer was displayed on or before 13.02.2009 i.e. on the date of termination. He has further admitted during examination that the juniors to the claimant are still working with the management and there are 25 stenographers presently working for the management. He also admitted that there is nothing on record to show that permission was obtained either from Government of India or from the government of NCT before terminating the service of the claimant when a dispute was pending before the conciliation officer, relating to the claimants claim for ACP.

In this proceeding the claimant has all along maintained that he was working as a temporary employee of the management since the date of his initial appointment and promoted to the cadre of stenographer Grade-D observing due procedure. He was transferred to the administration pool of IGNCA from the Building Project Committee after his promotion in 1996. Hence, his service condition should not have been affected for the abolition of BPC. On completion of 10 years as the stenographer he was entitled to grant of ACT and relating to the same, a dispute was pending before the conciliation officer. Notices when served on the management they became aggrieved and illegally terminated his service.

Though the Ld. Counsel for the management has forcefully argued that the service of the claimant was co-terminous with the termination of BPC, their own documents like the service book maintained by; them and the order of termination clearly shows that the claimant though initially appointed in the BPC was subsequently appointed and promoted to the post of stenographer Grade-D following the procedure and transferred to the administration pool. Hence, his service shall not be affected/ impacted when the BPC was wound up.

The Ld. Counsel for the management solely relied upon the judgment of Uma Devi referred Supra and submitted that the Hon'ble Apex Court have condemned the back door entry into government services which ultimately impacts the constitutional mandate of equal opportunity for public employment.

The effect of the constitution Bench judgment of the Apex Court in the case of Uma Devi came up for consideration with reference to unfair labour practice by the Hon'ble Supreme Court in the case of **Mahrashtra State Road Transport and Another vs. Casteribe Rajya Parivahan Karamchari Sangathan reported in (2009) 8 SCC Page 556** wherein the Hon'ble Apex Court came to hold that the judgment in the case of Uma Devi has not over ridden the powers or Industrial and Labour Courts for passing appropriate order, once unfair labour practice on the part of the employer is established. The judgment of Uma Devi does not denude the Industrial and Labour Court of their statutory power.

Now it is to be seen if the claimant of this proceeding was subjected to unfair labour practice or not. **"Unfair Labour Practice"** as defined u/s 2(ra) means any of the practice specified in the 5th Schedule of the ID Act. Under the said 5th Schedule to employ workmen as Badlis, Casual or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent workmen amounts to unfair Labour Practice. In this case the document filed by the workman and marked as exhibits clearly indicate that the claimant was working in two capacities since the year 1991 and he had expertise as a stenographer and through a proper procedure he was selected for the said post, promoted and transferred to the administrative pool of the management. The management, in utter disregard of law, deprived him of his legitimate right and entitlement for ACP for which a dispute was pending before the conciliation officer on the date of termination. But the management never obtained the permission of the appropriate government in compliance of the provision of section 33 of the Industrial Dispute Act.

Besides the case of Maharashtra Road Transport referred supra, the Hon'ble Supreme Court in the case of **Shri Ajay Pal Singh vs. Haryana Warehousing Corporation decided in Civil Appeal No. 6327 of 2014** disposed of on 09th July 2014 have held that:

"The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

Thus after going through the judgments of Maharashtra Road Transport and Ajay Pal Singh refereed supra it is held that the observation made in the case of Uma Devi has no applicability to the facts of the present case where the claimant has been subjected to Unfair Labour Practice for being engaged for work for prolonged period but not allowed ACP.

In this case the oral and documentary evidence since proves the continuous service of the claimant for the management since the year 1991to 18.02.2009, the decision of the management in terminating his service during the pendency of industrial dispute before the conciliation officer and without complying the provisions of section 25-F, 25-G, 25-H and 25-N is held to be illegal and unjustified.

The witness examined on behalf of the management as MW1 has stated that 25 persons are still working as stenographer for the management. Though under the scope of the reference this tribunal is to adjudicate about the legality and justifiability of the management in terminating the service of the claimant, the industrial adjudicator under the Industrial Dispute Act enjoys wide power for granting relief which would be proper under a given circumstance. In the case of **Hari Nandan Prasad and Another vs. Employer I/R to Management FCI reported in (2014)7 SCC 190** the Hon'ble Supreme Court have held that the power conferred upon Industrial Tribunal and Labour Court by the Industrial Dispute Act is wide. The Act deals with Industrial Dispute, provides for conciliation, adjudication and settlement and regulates the right of the parties and the enforcement of the awards and the settlement. Thus, the Act empowers the adjudicating authority to give relief which may not be permissible in common law or justified under the terms of the contract between the employer and the workman. While referring to the judgment of **Bharat Bank Limited vs. Employees of the Bharat Bank Limited reported in (1950) LLJ 921 Supreme Court** the court came to hold that in settling the dispute between the employer and the workmen the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper though those may not be within the terms of any existing agreement. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

Here is a case where, as indicated above the claimant has been victimized on account of unfair labour practice by the management. The post in which the claimant was working is still existing in the management and as admitted by the management witness, persons junior to the claimant are working against the said post. Keeping the situation in view it is felt proper to issue a direction to the management to reinstate the claimant in the post of stenographer Grade-D with immediate effect.

Now it is to be seen if the claimant would be entitled to back wages. The law is well settled that the management in order to avoid back wages has to prove that the claimant was gainfully employed during the intervening period of the termination and order of the court/tribunal. But in this case the burden of the management has been relaxed by the admission of the claimant in his affidavit evidence. The claimant has clearly admitted that he was employed under the different persons from October 2009 till he testified before this tribunal on 02nd March 2019. Evidence has also been adduced by him to prove the salary credited to his bank account. From this evidence it appears that the claimant has earned Rs. 14000/- per month in average from the date of his illegal termination. Hence, it is held that the management shall pay him the differential of his remuneration considering his last pay on the date of termination alongwith the reinstatement. This issue is accordingly answered in favour of the claimant. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the workman. It is held that the action of the management in terminating the service of the claimant during the pendency of industrial dispute before the conciliation officer is in contravention of the provisions of section 25-N of the ID Act. The employer management is also guilty for not complying the provisions of 25-f, 25-G,25-H of the Id Act. The management department is hereby directed to reinstate the claimant in the post from which he was illegally terminated within 2 months from the date of publication of this award and pay the differential remuneration as stated in the preceding paragraph within 2 months from the date of reinstatement failing which the amount so accrued shall carry interest @9% per annum from the date of illegal termination till the final payment is made.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2021

का.आ. 603.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, भटिंडा (पंजाब) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री पवन कुमार पुत्र रतन लाल, श्री. एन.के. जीत, अध्यक्ष, टेलीकॉम लेबर यूनियन, मोहल्ला हरि नगर, लाल सिंह बस्ती रोड, भटिंडा (पंजाब) कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 578/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल-40012/382/99-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th September, 2021

S.O. 603.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 578/2005) of the Central Government Industrial Tribunal cum-Labour Court –II, Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Telecom, Bhatinda (Punjab) and Shri Pawan Kumar S/o Rattan Lal, C/o Shri. N. K. Jeet, President, Telecom Labour Union, Mohalla Hari Nagar, Lal Singh Basti Road, Bhatinda (Punjab) Worker which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-40012/382/99-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No.578/2005

Registered On:-06.03.2000

Pawan Kumar S/o Rattan Lal, C/o Sh. N.K. Jeet, President,
Telecom Labour Union, Mohalla Hari Nagar,
Lal Singh Basti Road, Bhatinda (Punjab)-151001. ...Workman

VERSUS

The General Manager, Telecom, Bhatinda (Punjab)-151001. ...Management

AWARD

Passed On:-09.08.2021

Central Government vide Notification No.L-40012/382/99/IR(DU) Dated 09.02.2000, under clause (d) of Sub-Section (1) and sub-Section (2A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial Dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of General Manager, Telecom, Bhatinda in terminating the services of Sh. Pawan Kumar S/o Sh. Rattan Lal is legal and justified? If not, to what relief the workman is entitled and from which date?"**

1. In brief, the facts are that the workman was serving as workman in Telephone Exchange, Budhladha, on a permanent job since 22.08.1994 and was drawing Rs.2138/- as monthly wage. The services of the workman were terminated on 01.03.1999 without notice, charge-sheet, enquiry and compensation. The termination of the services of the workman is illegal, null and void, against the provisions of the Industrial Disputes Act, 1947 and against the principles of natural justice. The juniors to the workman have been retained in service and even new hands have been recruited without calling the workman. The workman is unemployed since the termination of his services. A demand notice under Section 2-A of the Industrial Disputes Act, 1947

was served upon the respondent-management on 15.04.1999 wherein the workman was requested to take back him on duty with continuity of service, full back wages with interest and cost failing which the workman was to be liable for all legal consequences but respondent-management has refused to take back the workman on duty. It is therefore, prayed that the workman may kindly be reinstated with continuity of service and with full back wages along with interest and any other benefit which this Hon'ble Court may deem fit and proper.

2. Respondent-management filed its written statement, alleging therein that Telecom Distt. Engineer (now General Manager Telecom Distt.) Bhatinda never engaged any clerk or labourer prior to 01.08.1994 directly or through contractor. The management obtained a certificate of registration on 23/28.12.94 (Annexure R-1) under sub-section 2 of Section 7 of Contract Labour (Regulation and Abolition) Act, 1970 and Rules framed thereunder. The Telecom Distt. Engineer, Bhatinda entered into an agreement dated 01.08.1994 (Annexure R-2) with M/s J.S. Chaudhary, Govt. Contractor, which was extended upto 28.02.1995. Agreement daged 6.6.1995(Annexure R-3) with Sh. Sohan Lal, Govt. Contractor, Bhatinda, agreement dated 25.08.1995 (Annexure R-4), 17.06.1996 (Annexure R-5) an ddated 01.04.1997 (Annexure R-6) with Sh. Ashok Kumar Garg, Govt. Contractor, Rampuraphul. An agreement dated 26.06.1996 (Annexure R-7) was also made with Amarjit Singh Bajwa, agreement dated 13.11.1997 (Annexure R-8) and agreement dated 10.03.1998 (Annexure R-9) with M/s. Deepak Kumar, agreement dated 18.03.1998 (Anexure R-10) and agreement dated 19.01.1999 (Annexure R-11) was made with M/s. Ashok Kumar Garg of Rampuraphul. The said contractors were given licence dated 22.09.1992 (Annexure R-12) and 31.07.1997 (Annexure R-13) by the Assistant Labour Commissioner (Central) Chandigarh for engaging the labourers by the General Manager(Previously Telecom Distt. Engineer/Telecom Distt. Manager) Telecom Distt. Bhatinda. The workman might be working under the management through any of the aforesaid contractors on daily wages basis and the record of their attendance etc. would be available with those Contractors. The Department of Telecom has imposed a partial ban vide their letter no.270-6/84-STN dt. 30.03.85 (Annexure R-15) for engagement of casual labourer for any type of work. Casual labourer for such works in these units would be engaged only for specific jobs and retrenched as soon as the work is over. Appointment on daily wage cannot be conduit signed for regular appointment. The workman was neither appointed in the cadre of Workman by the management of General Manager Telecom Distt. Bhatinda nor recruited in any job directly so the question of terminating the service illegally or misusing the powers does not arise. In view of the submission made above, the statement of claim submitted by the workman is liable to be dismissed.

3. Workman filed replication to the written statement filed by the management, denying the fact that the workman was working under the management through alleged contractors. The workman was directly employed and put on job by the management. The workman has put in more than 240 days in a year, serving the management and is legally entitled to the protection under the I.D. Act and continuation in service. At the time of the employment of workman by the management, neither the management was validly registered nor the said contractor was having a valid license under the Contract Labour (R&A) Act, 1970 to employ/supply workman which is a skilled job as per Department of Telecom orders. The workman was employed as casual labour directly by the management and not through any contractor. Usually no appointment orders are issued by the management in respect of casual workers. The D.O.T. has framed a scheme at the instance of the Hon'ble Supreme Court to grant temporary status and ultimately regularise the casual labourers. The remaining facts alleged in the replication are same as alleged in the claim statement as such, need not to be repeated again.

4. Claimant/workman Pawan Kumar has submitted his affidavit and proved it as Ex.WW1 and Durga Prasad as WW2 who has been cross-examined by the learned counsel of the management.

5. Management has submitted affidavit of witness Baldev Kishan, CAO(Legal) as MW1, affidavit of witness Ashok Kumar, D.E. (Legal) as MW2 as well as affidavit of witness Sanjeev Kumar, AGM (Admn.) as MW3 who were cross-examined by the learned counsel of the workwoman.

6. Heard the learned counsel of the workman Sh. Hitesh Verma as well as learned counsel of the management Sh. Anish Babbar and perused the file.

7. Before averting to the real controversy between the parties, it will be pertinent to mention that claim petition is earlier decided by my learned predecessor vide Award Dated 17.09.2005 against which Civil Writ Petition No. 20930/2015 is preferred by the claimant/workman Major Singh which is ultimately decided by the Hon'ble Punjab & Haryana High Court vide its order dated 04.02.2020 with the observation that parties be given two opportunities each to lead evidence and award be decided preferably within 6 months but not later than one year from the receipt of the certified copy of the order. In pursuance of the order of the Hon'ble Punjab & Haryana High Court, opportunity is given to the workman to produce evidence but workman refused to give any evidence relying on previous evidence vide its statement dated 23.07.2020. Contrary to this, management has submitted the affidavit of Sanjeev Kumar, AGM (Admn.), Bathinda along with the photocopies of agreements from the year 1994 to 1999 who has been cross-examined by the learned counsel of the workman.

8. The first contention is regarding the claimant to be a workman even if he was appointed on job basis for a particular time or subject to regular appointment as a workman. To my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

9. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.***

10. Question remains to be seen whether claimant/workman Pawan Kumar has proved that he was directly engaged by the management on 22.08.1994 and served till his termination on 01.03.1999. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the management. In this connection, workman Pawan Kumar has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Sanjeev Kumar, AGM(Admn.), Bathinda has categorically stated in his evidence that he was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

11. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

(1) Whether the principal employer pays the salary instead of contractor and

(2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

12. Learned counsel of the workman contended that payment of salary was made by the management as is alleged in the claim petition as well as affidavit filed and it was the management who virtually paid the salary. Learned counsel of the workman contended that all the documents are in possession of the management and in spite of the request made by the claimant/workman and order of the Tribunal, management did not submit any document relating to the engagement as well as salary by saying that it has no documents because workman was not directly engaged by the management. WW1 Pawan Kumar has stated in his cross-examination that he was

paid salary by the JE of the Department along with the facility of ESI, provident fund etc. According to this witness Sukhbir Singh was the J.E. at that time who is now posted as SDE, Faridabad. It is pertinent to mention that workman has not made any effort to summon this witness in spite of the knowledge that Sukhbir was working as SDE Faridabad. It is pertinent to mention that the record of provident fund and ESI is not in possession of the management as such, claimant/workman should have made attempt to produce these documents to prove that he was directly paid by the management and accordingly, provident fund and ESI is deducted from his salary and deposited in the concerned-head under the Act.

13. Secondly, so far as the question of controls and supervision is concerned. Workman has categorically stated that his work was controlled and supervised by the officials of the management. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.***
>
> ***The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."***

20. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant/workman is mum on this score and workman has not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grant the leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasised to control the work of the management for a specific work in efficient manner done by the management in the establishment.

15. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of the payment of salary, attendance register or work done by the claimant/workman during the course of alleged employment with the management. There is nothing mentioned in the claim petition as well as affidavit of the workman that who was the person-concerned by which he was directly engaged in the establishment of the Telecom-Department. I am of the considered opinion that mere saying that he was employed by the JTO Budhladha is not sufficient unless it is stated and proved that how he came in the contact of JTO, Budhladha for rendering his services with the management. Thus, it may be observed that there is nothing conclusive either oral or documentary to prove that it was principle-employer Telecom-Department who controls and supervise the work of the workman. Workman Pawan Kumar has examined Durga Prasad as WW2. This witness has stated in his examination-in-chief that he had joined the services of the management from 05.04.1995 as a Phone Mechanic. According to this witness, claimant/workman Pawan Kumar was working with the office as daily wager as Lineman's Helper. According to this witness, services of the workman were terminated on 01.03.1999 when juniors were retained in service. During the course of cross-examination, this witness has stated that he worked with the claimant/workman in the same office and have not seen any order of engagement/termination of services by the management. According to this witness, claimant/workman was not paid his salary in his presence. He has further admitted that he does not know whether workman was working through contractor. According to this witness, he does not know that management was getting the work from the contractor. Thus, the evidence given by this witness could not be

treated as conclusive especially in the light of the fact that he does not aware with respect to the claimant's engagement through contractor.

16. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman is rendering his services with the management for so many years and he had completed 240 days in the year 01.03.1999 before termination by the management. As per pleading of the workman he was terminated from 01.03.1999 without compliance of Section 25-F of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workman was retrenched/terminated by the management in corresponding year i.e. on 01.03.1999 even he had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit filed by the workman, it is alleged in general that he has served 240 days in the telecom-management. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workman is not very specific with respect to 240 days working in the establishment. In the light of the specific denial by the management for rendering services with the management, burden lies on the workman to prove this fact. Hon'ble Supreme Court in the case of ***Range Forest Officer Vs. S.T. Hadimani, (2002) 3 SCC 25,*** has held that if there is no proof of receipt of salary or wages of 240 days or order or record in this regard was produced then mere non-production of the muster roll for a particular period is not sufficient for the Labour Court to hold that workman had worked for 240 days as claimed. Thus, as per the Hon'ble Supreme Court in order to prove the working of 240 days, receipt of salary or wages as the case may be are relevant for the consideration by the Tribunal. Learned counsel of the workman contended that all these documents are with the management and they have not submitted before this Tribunal. Learned counsel of the management contended that this is a case of specific denial by the management as such, question of submission of any document pertaining to the payment of wages or salary or attendance register or muster roll etc. does not arise to be submitted by the management. Learned counsel of the workman contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s. Bharat Heavy Electricals Ltd. Vs. State of U.P. and others, Civil Appeal No. 2459-61 of 1999 decided on 21.07.2003*** that adverse inference should be drawn against the management for the non-production of the documents. Learned counsel of management relying in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas (supra),*** argued that presumption as to adverse inference for non-production of evidence is always optional rather obligatory as is alleged by the learned counsel of the workman. The Hon'ble Supreme Court in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** has held that provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication the general principle provides are however applicable. It is also in pray for the Industrial Tribunal to see that principal of natural justice are complied with the burden of proof is on the claimant/workman to show that he had worked for 240 days in preceding 12 months prior to his alleged retrenchment/termination in terms of Section 25 of the Industrial Disputes Act, an order retrenching a workman could not be effective unless the condition precedent therefore satisfied. From the perusal of the file, it is clear that the workman has not adduced any cogent evidence whatsoever in support of his contention that he has completed 240 days continuously before alleged termination/retrenchment.

17. The Hon'ble Supreme Court in the case of ***Range Forest Officer Vs. S.T. Hadimani (supra),*** has held as follow:-

> ***"In our opinion, the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more that 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but his claim was so denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement***

for his period was produced by the workman. On this ground alone, the award is liable to be set aside."

18. Conclusively it may be observed that the workman may have rendered his services under the contractors from 22.08.1994 as there is sufficient evidence to prove that from the year 1994 onwards 1999 contractors were engaged by the management in the light of the statement of Sanjeev Kumar, AGM (Admn.) supported with the hotostat copies of the agreements produced by the witness of the management Sanjeev Kumar, AGM (Admn.). Legally the initial burden lies with the workman to prove that he was working initially with the telecom-department which is subsequently know as BSNL accordingly. As such, the workman is not liable for any relief from this Tribunal and the reference is answered accordingly.

19. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2021

का.आ. 604.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, भटिंडा (पंजाब) के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती रानी कौर, सी/ओ श्री. एन.के. जीत, 27349, लाल सिंह बस्ती रोड, भटिंडा (पंजाब) कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 655/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.9.2021 को प्राप्त हुआ था।

[सं. एल-40012/191/2001-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th September, 2021

S.O. 604.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 655/2005) of the Central Government Industrial Tribunal cum-Labour Court –II, Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Telecom, Bhatinda (Punjab) and Smt. Rani Kaur, C/o Sh. N. K. Jeet, 27349, Lal Singh Basti Road, Bhatinda (Punjab) Worker which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-40012/191/2001-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 655/2005

Registered On:-26.09.2001

Smt. Rani Kaur, C/o Sh. N.K. Jeet, 27349,
Lal Singh Basti Road, Bhatinda (Punjab)-151001. ... Workwoman

VERSUS

The General Manager, Telecom, E 10-B Building,
Bhatinda (Punjab)-151001. ... Management

AWARD

Passed On:-09.08.2021

Central Government vide Notification No.L-40012/191/2001-IR(DU) Dated 05.09.2001, under clause (d) of Sub-Section (1) and sub-Section (2A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial Dispute for adjudication to this Tribunal:-

"Whether the action of the management of General Manager, Telecom, Bhatinda in terminating the services of Smt. Rani Kaur D/o Sh. Baur Singh is just and legal? If not, to what relief the workman is entitled and from which date?"

1. In brief, the facts are that the workwoman was serving as Clerk in Telephone Exchange, Sardool Garh on a permanent job since 28.05.1998 and was drawing Rs.2168/- as monthly wage. The services of the workwoman were terminated on 01.03.1999 without notice, charge-sheet, enquiry and compensation. The termination of the services of the workwoman is illegal, null and void, against the provisions of the Industrial Disputes Act, 1947 and against the principles of natural justice. The juniors to the workwoman have been retained in service and even new hands have been recruited without calling the workwoman. The workwoman is unemployed since the termination of her services. A demand notice under Section 2-A of the Industrial Disputes Act, 1947 was served upon the respondent-management, wherein the workwoman was requested to take back her on duty with continuity of service, full back wages with interest and cost failing which the workwoman was to be liable for all legal consequences but respondent-management has refused to take back the workwoman on duty. It is therefore, prayed that the workwoman may kindly be reinstated with continuity of service and with full back wages along with interest and any other benefit which this Hon'ble Court may deem fit and proper.

2. Respondent-management filed its written statement, denying the fact that the workwoman was appointed by the management w.e.f. 28.05.1998 and was being paid any wages as alleged. The workwoman has not placed on record any appointment letter as well as termination letter if any issued by the management. The management has entered into a contract agreement(Annexure R-1) with the contractor for performance of petty job in the department as a result of which the contractor may have engaged some manpower. The workwoman was neither appointed nor recruited by the management so the question of termination much less illegal, null and void does not arise. The contract labour cannot claim to have acquired any right to hold a Civil Post. No person junior to the workwoman have been retained in service nor any new hand recruited. In fact, the management has imposed a partial ban on 30.03.1985 for engagement of casual labourers for any type of work and a complete ban on 26.06.1988 and it was decided that there should be no recruitment for casual labourer even for specific jobs. The workwoman must have been engaged somewhere to earn his livelihood and may be earning more than the amount he might have been receiving from the contractor. The workwoman was not engaged nor paid by the management so the question of taking her back into service with continuity does not arise nor she is entitled to any back wages. It is therefore respectfully prayed that the reference may be answered in negative as she is not entitled for any relief whatsoever, as prayed for.

3. Claimant/workwoman Rani Kaur has submitted her affidavit and proved it as Ex.WW1, and Ashok Kumar as WW2 and Sukhdev Singh as WW3 in support of her claim who have been cross-examined by the learned counsel of the management.

4. Management has submitted affidavit of witness Baldev Kishan, CAO (Legal) as MW1 as well as witness Sanjeev Kumar, AGM (Admn.) as MW2 who were cross-examined by the learned counsel of the workwoman.

5. Heard the learned counsel of the workman Sh. Hitesh Verma as well as learned counsel of the management Sh. Anish Babbar and perused the file.

6. Before averting to the real controversy between the parties, it will be pertinent to mention that claim petition is earlier decided by my learned predecessor vide Award Dated 17.09.2005 against which Civil Writ Petition No. 20930/2015 is preferred by the claimant/workwoman Smt. Rani Kaur which is ultimately decided by the Hon'ble Punjab & Haryana High Court vide its order dated 04.02.2020 with the observation that parties be given two opportunities each to lead evidence and award be decided preferably within 6 months but not later than one year from the receipt of the certified copy of the order. In pursuance of the order of the Hon'ble Punjab & Haryana High Court, opportunity is given to the workman to produce evidence but workwoman refused to give any evidence relying on previous evidence vide its statement dated 23.07.2020. Contrary to this, management has submitted the affidavit of Sanjeev Kumar, AGM (Admn.), Bathinda along with the photocopies of agreements from the year 1994 to 1999 who has been cross-examined by the learned counsel of the workwoman.

7. The real controversy lies between the parties with respect to the relationship of workwoman with management. The issue as to whether the workwoman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law

that onus to prove that claimant was in the employment of management is always on the workwoman/claimant and it is for the workwoman to adduce evidence to prove factum of her employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of her appointment or engagement for that period to show that she had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

8. The first contention is regarding the claimant to be a workwoman even if she was appointed on job basis for a particular time or subject to regular appointment to the Post of Clerk. To my mind, the claimant is a workwoman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

9. Question remains to be seen whether claimant/workwoman has proved that she was directly engaged by the respondent-management on 28.05.1998 as a Clerk and rendered her services till the alleged retrenchment/termination. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workwoman/claimant was directly employed by the respondent-management. In this connection, workwoman Rani Kaur has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Sanjeev Kumar, AGM (Admn.), Bathinda has categorically stated in his evidence that workwoman was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

10. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No. 10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

(1) Whether the principal employer pays the salary instead of contractor and

(2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workwoman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workwoman has not mentioned anything regarding the mode of payment of wages, salaries etc. in her affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workwoman.

11. Learned counsel of the workwoman contended that payment of salary was made by the management as is alleged in the claim petition as well as affidavit filed and it was the management who virtually paid the salary. Learned counsel of the workwoman contended that all the documents are in possession of the management and in spite of the request made by the claimant/workwoman and order of the Tribunal, management did not submit any document relating to the engagement as well as salary by saying that it has no documents because workwoman was not directly engaged by the management. So far as the payment of salary by the principal-employer is concerned, learned counsel of the workwoman contended that payment of salary is given by the SDO/PCO telephone as is alleged in the statement of the workwoman while examined as WW1 in the file. As per the learned counsel of the workwoman, it was the management who actually paid the salary to the workwoman amounting Rs.2168/- but workwoman has not produced any documentary record regarding the salary paid by the management. The WW1 workwoman Rani Kaur alleged in her affidavit that she was given

only Rs.1200/-per month instead agreed amount of Rs.2168/- but nothing is stated that it was the non-payment of aggrieved amount which ultimately resulted into the termination/retrenchment of the workwoman. In fact, reason for termination is not mentioned in the claim petition as well as affidavit filed by the workwoman.

12. Secondly, so far as the question of controls and supervision is concerned. Workwoman has categorically stated that her work was supervised by the officials of the management. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workwoman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.***
>
> ***The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."***

13. Claimant/workwoman has examined two other witnesses namely Ashok Kumar as WW2 and Sukhdev Singh as WW3 in support of her claim. So far as the WW2 Ashok Kumar is concerned, he has stated in his examination-in-chief that he has not bring register of calls/fax of customers service of Sardool Garh for the period 28.05.1998 to 01.03.1999 because it is not available with the office. According to this witness, SDO-BSHL Sardool Garh has issued a letter in this respect and photocopy of which is on record. In fact, witness Ashok Kumar who is an employee of the telecom-department has nothing stated in favour of the claimant/workwoman. Contrary to this, witness Sukhdev Singh WW3 has stated that she served with the management at Sardool Garh as TTA in 1998 to 2010 and fully aware with the workwoman. According to this witness she had employed by the SDO-telecom and SDO or JTO had paid wages to her of Rs.1000/-/1200/- per month. But during the course of cross-examination, the statement of this witness reveals that he is not aware with the workwoman. He has stated that workwoman was not appointed as a Clerk against the specific case of the workwoman in claim petition. Similarly, he has further stated that he does not know whether the workwoman left the work of his own or her services were terminated. According to this witness, she was not paid wages in his presence by the SDO or JTO. He has further stated that workwoman was not posted on a permanent post. Thus, the entire cross-examination of this witness falsified the facts alleged in the claim petition regarding the appointment of the workwoman on permanent post of the Clerk. Similarly, so far as the payment of salary by the management is concerned, the oral evidence adduced by the workwoman does not inspire confidence that she was ever paid by the management as is alleged in her claim petition.

14. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workwoman with the management. In any way nothing is on record with respect of the demand of salary, attendance register or work done by the claimant/workwoman during the course of alleged employment with the management. The evidence of workwoman Rani Kaur given during the course of cross-examination does not convince this Tribunal with respect to the direct employment by the management. According to this witness, the management had notified the post in the newspaper and in pursuance of the publication in newspaper he had approached the Tribunal. She has further stated that she does not possess the copy of the newspaper which carried advertisement. Similarly, this witness has stated that she has no any document or evidence to show that she was getting Rs.2168/- as monthly salary. As per this witness, she has not complained to anyone with respect of her dis-engagement but she had demanded her remaining amount which is not paid by the management. She has further admitted that she had not complained about the wages to the Labour Commissioner. During the course of cross-examination she has stated that she has record relating to her employment with the management and work done by her during the employment may be produced by her. Despite of the opportunity being given by the Tribunal to produce the documents nothing is brought on record as documentary evidence to prove that she was directly employed by the management.

15. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the

management contended that workwoman in fact was not the employee of the establishment as such, neither she is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No. 6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workwoman contended that she has rendered her services with the management and completed 240 days in the year between 28.05.1998 to 01.03.1999 before termination of her services by the management. As per the pleadings of the workwoman, she was terminated on 01.03.1999 without compliance of Section 25-F of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workwoman was retrenched/terminated by the management in corresponding year i.e. on 01.03.1999 even she had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit filed by the workwoman, it is alleged in general that she has served 240 days in the telecom-management. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workwoman is not very specific with respect to 240 days working in the establishment. In the light of the specific denial by the management for rendering 240 days service before alleged termination, burden lies on the workwoman to prove this fact. Hon'ble Supreme Court in the case of ***Range Forest Officer Vs. S.T. Hadimani, (2002)3 SCC 25,*** has held that if there is no proof of receipt of salary or wages of 240 days or order or record in this regard was produced then mere non-production of the muster roll for a particular period is not sufficient for the Labour Court to hold that workwoman had worked for 240 days as claimed. Thus, as per the Hon'ble Supreme Court in order to prove the working of 240 days, receipt of salary or wages as the case may be are relevant for the consideration by the Tribunal. Learned counsel of the workwoman contended that all these documents are with the management and they have not submitted before this Tribunal. Learned counsel of the management contended that this is a case of specific denial by the management as such, question of submission of any document pertaining to the payment of wages or salary or attendance register or muster roll etc. does not arise to be submitted by the management. Learned counsel of the workwoman contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s Bharat Heavy Electricals Ltd. Vs. State of U.P. and others, Civil Appeal No.2459-61 of 1999 decided on 21.07.2003*** that adverse inference should be drawn against the management for the non-production of the documents. Learned counsel of management relying in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** argued that presumption as to adverse inference for non-production of evidence is always optional rather obligatory as is alleged by the learned counsel of the workwoman. The Hon'ble Supreme Court in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** has held that provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication the general principle provides are however applicable. It is also in pray for the Industrial Tribunal to see that principal of natural justice are complied with the burden of proof is on the claimant/workwoman to show that she had worked for 240 days in preceding 12 months prior to her alleged retrenchment/termination in terms of Section 25 of the Industrial Disputes Act, an order retrenching a workwoman could not be effective unless the condition precedent therefore satisfied. From the perusal of the file, it appears that the workwoman has not adduced any evidence whatsoever in support of her contention that she has completed 240 days continuously before alleged termination/retrenchment and complied with the requirement of Section 25-B of the Industrial Disputes Act, 1947.

16. The Hon'ble Supreme Court in the case of ***Range Forest Officer Vs. S.T. Hadimani(supra),*** has held as follow:-

> ***"In our opinion, the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more that 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but his claim was so denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for his period was produced by the workman. On this ground alone, the award is liable to be set aside."***

Conclusively it may be observed that the workwoman may have rendered her services under the contractor from 28.05.1998 as there is sufficient evidence to prove that from the year 1994 onwards 1999 contractors were engaged by the management and copies of the receipt of agreements are produced by the witness of the management Sanjeev Kumar, AGM(Admn.). Legally the initial burden lies with the workwoman to prove that she was working initially with the telecom-department which is subsequently know as BSNL

accordingly. As such, the workwoman is not liable for any relief from this Tribunal and the reference is answered accordingly.

17. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 8 सितम्बर, 2021

का.आ. 605.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, भटिंडा (पंजाब) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सुरिंदर कुमार पुत्र खेता राम, श्री. एन.के. जीत, अध्यक्ष, टेलीकॉम लेबर यूनियन, मोहल्ला हरि नगर, लाल सिंह बस्ती रोड, भटिंडा (पंजाब) कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-II,चंडीगढ़ के पंचाट (संदर्भ संख्या 336/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल-40012/429/99-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 8th September, 2021

S.O. 605.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 336/2005) of the Central Government Industrial Tribunal -cum-Labour Court –II, Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Telecom, Bhatinda (Punjab) and Shri Surinder Kumar S/o Kheta Ram, C/o Shri. N. K. Jeet, President, Telecom Labour Union, Mohalla Hari Nagar, Lal Singh Basti Road, Bhatinda (Punjab) Worker which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-40012/429/99-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No.336/2005

Registered On:-06.03.2000

Surinder Kumar S/o Kheta Ram, C/o Sh. N.K. Jeet,
President, Telecom Labour Union, Mohalla Hari Nagar,
Lal Singh Basti Road, Bhatinda(Punjab)-151001. ...Workman

VERSUS

The General Manager, Telecom, Bhatinda (Punjab)-151001. ...Management

AWARD

Passed On:-12.08.2021

Central Government vide Notification No.L-40012/429/99/IR(DU) Dated 16.02.2000, under clause (d) of Sub-Section (1) and sub-Section (2A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial Dispute for adjudication to this Tribunal:-

"Whether the action of the management of General Manager, Telecom, Ferozepur in terminating the services of Sh. Surinder Kumar S/o Sh. Kheta Ram is legal and justified? If not, to what relief the workman is entitled and from which date?"

1. In brief, the facts are that the claimant was serving as workman in the office of J.T.O. Indoor Malout on a permanent job since 16.04.1997 and was drawing Rs.2138/- as monthly wage. The services of the workman were terminated on 05.03.1999 without notice, charge-sheet, enquiry and compensation. The termination of the services of the workman is illegal, null and void, against the provisions of the Industrial Disputes Act, 1947 and against the principles of natural justice. The juniors to the workman have been retained in service and even new hands have been recruited without calling the workman. The workman is unemployed since the termination of his services. A demand notice under Section 2-A of the Industrial Disputes Act, 1947 was served upon the respondent-management on 15.04.1999 wherein the workman was requested to take back him on duty with continuity of service, full back wages with interest and cost failing which the workman was to be liable for all legal consequences but respondent-management has refused to take back the workman on duty. It is therefore, prayed that the workman may kindly be reinstated with continuity of service and with full back wages along with interest and any other benefit which this Hon'ble Court may deem fit and proper.

2. Respondent-management filed its written statement, denying the fact that the workman was appointed by the management in the month of 16.04.1997 and was being paid Rs.2138/- and the workman has not produced the record which may prove that he was paid monthly wages of Rs.2138/-. No appointment letter has been issued to the workman nor he was the member of the service. The payment was directly made to the contractor and the department is having no record to reveal that the workman has actually worked with the erstwhile department. The contractor sometimes used to send one person or the other and no particular person has continuously worked with the department. As the workman was neither recruited nor appointed, the question of his termination w.e.f. 05.03.1998 does not arise. The workman cannot claim any relief against the erstwhile-department of Telecommunication Services which has been converted into a P.S.U. known as BSNL w.e.f. 01.10.2000. The workman was neither engaged/recruited by the management nor he has been the member of the service nor any appointment letter was issued so the question of termination of his service does not arise by the management. The workman was not recruited according to the recruitment rules by the management nor his services governed under the rules as applicable to the other employees. Therefore, the liability of the contractor cannot be passed on the management. Since the workman was never engaged nor terminated by the management therefore, question of granting any compensation, notice pay etc. does not arise. In view of the submission made above, it is respectfully prayed that the claim petition filed by the workman be dismissed with costs.

3. Workman filed replication to the written statement filed by the management alleging therein that the workman was appointed by the management and was allotted work, supervised, controlled and paid by the management through his subordinate officers. The records of attendance, work done by the workman and the payments made to the workman are with the management. The contractor as alleged was nowhere in the picture. The said contractor, if any was merely a name lender, a shadowy figure. The termination of the workman was also done through verbal orders without complying with the provisions of the ID Act and the principles of natural justice. The workman worked continuously from 16.04.1997 to 05.03.1999 with the management in the O/o JTO Indoor Malour and has completed more than 240 days service in each year and his termination is illegal, arbitrary, null and void. The remaining facts alleged in the replication are same as alleged in the claim statement as such, need not to be repeated again.

4. In support of his case, workman Surinder Kumar has filed its affidavit in evidence as Ex.WW1 and proved documents i.e. photocopies of duty chart (8 pages), logbook (18 pages), jumper slip dated 11.10.1997 and 27.10.1997, generator summary report of telephone exchange, Malout (8 pages) marked as A (colly). The workman has also examined Thakur Dass as WW2 and Harphool Singh as WW3. WW2 is the employee of the management who has been summoned on behalf of the workman to prove the documents relating to duty chart casual labour duty register of telephone exchange, weekly chart, logbook, jumper slip but this witness has stated that the aforesaid documents of the relevant period is not available with the management. So far as the witness Harphool Singh is concerned, he tried to prove that he worked with the workman who has been engaged by the management.

5. Management has submitted affidavit of Jatinder Chinia, JTO as MW1, Prit Pal Singh as MW2 and Sanjeev Kumar as MW3, who has been cross-examined by the learned counsel of the workman.

6. Heard the learned counsel of the workman Sh. Hitesh Verma as well as learned counsel of the management Sh. Anish Babbar and perused the file.

7. Before averting to the real controversy between the parties, it will be pertinent to mention that claim petition is earlier decided by my learned predecessor vide Award Dated 17.09.2005 against which Civil Writ Petition No. 20930/2015 is preferred by the claimant/workman Surinder Kumar which is ultimately decided by the Hon'ble Punjab & Haryana High Court vide its order dated 04.02.2020 with the observation that parties be given two opportunities each to lead evidence and award be decided preferably within 6 months but not later

than one year from the receipt of the certified copy of the order. In pursuance of the order of the Hon'ble Punjab & Haryana High Court, opportunity is given to the workman to produce evidence but workman refused to give any evidence vide its statement dated 23.07.2020. Contrary to this, management has submitted the affidavit of Sanjeev Kumar, AGM (Admn.), Bathinda along with documents M-1 to M-9 i.e. agreements and details of payment (colly) and has been cross-examined by the learned counsel of the workman.

8. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47.***

9. The first contention is regarding the claimant to be a workman even if he was appointed on job basis for a particular time or subject to regular appointment as workman. To my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

10. Learned counsel of the workman contended that payment of salary was made by the management as is alleged in the claim petition as well as affidavit filed by the workman and it was the management who virtually paid the salary. Learned counsel of the workman contended that all the documents are in possession of the management and in spite of the request made by the claimant/workman and order of the Tribunal, management did not submit any document relating to the engagement as well as salary by saying that it has no documents because workman was not directly engaged by the management. Question remains to be seen whether claimant/workman has proved that he was directly engaged by the respondent-management on 16.04.1997 and rendered his services till the alleged retrenchment/termination. This fact has to be proved by the documentary evidence as well as oral evidence. In order to prove that he was employed by the management directly workman has submitted his affidavit as Ex.WW1 and relied upon the documents filed i.e. photocopies of duty chart (8 pages), logbook (18 pages), jumper slip dated 11.10.1997 and 27.10.1997, generator summary report of telephone exchange, Malout (8 pages) marked as A (colly). During the course of cross-examination by the management-counsel, this witness has stated that he started working with the department since 16.04.1997 without any appointment letter in writing. He has further stated that he was assumed by JTO Indoor that he shall be paid the minimum wages, EPF, ESI etc. This witness has stated that he is matriculate. He has further stated that duty charg does not contain the signature of JTO since it is filled by TTA. The logbook marked as A contains the signature of JTO dated 26.09.1998. According to this witness this document also contains the signature of SDE Telephone. The other pages do not contain the signature of any officer but it contains his signature as well as other workmen who has performed the duties. He has further stated that these documents are received from the department in full knowledge of the officials of the management. During the course of cross-examination he has stated that he performed duties of jumper joining on dictate of JTO and TT who used to assign the job to the workers against their signatures. The generator running register contains the signature of JTEO at page dated 28.03.1998 maintained by the JTO himself. It is pertinent to mention that nothing is asked from this witness so far as the facts alleged in his affidavit regarding documents mentioned therein to disprove the version of the claimant/workman.

11. The factum of workman's engagement with the management is also proved by the workman witness Harphool Singh who has been examined as WW3. This witness has stated that he knew the workman since his engagement by the management in year 1997. According to this witness, the workman was put on the job on testing the faults in main distribution frame in MDF. This witness has further proved that duty chart is prepared by the JTO and TTA and workmen working were connected with him at that time. This witness has specifically stated during the course of cross-examination that he used to convey the complaints of faults receipts at the window to Surinder Kumar after recording the same in the register and after checking the faults inside the exchange Surinder Kumar used to convey him back the outdoor faults. He admitted that workman was engaged as a casual labour and he was engaged through recruitment. According to this witness workman used to record the attendance on a different register from his own register. The important aspect of the evidence of the witness Harphool Singh is that he was working as Sr. TOA on Fault Research Service, Malout at the time of cross-examination meaning thereby he was working employee of the management. He has examined himself to prove the factum of engagement of workman with the management. There was no suggestion with respect to his affidavit as well as cross-examination that he was not an employee of management by the management counsel which also indicates the factum of his engagement with the management during the relevant time is not disputed as such, his evidence is trustworthy.

12. Undoubtedly, in Tribunal, cases have to be decided on the basis of the preponderance of the probability and not the proof beyond reasonable doubt. Similarly, the Hon'ble Supreme Court in the case of ***Municipal Coruporation Faridabad Vs. Shri Niwas, Appeal (Civil) 1581 of 2009, decided on 13.09.2004*** has held that provisions of Indian Evidence Act in an adjudication, the general principles provided however, applicable. It is also in pray for the Industrial Tribunal to see that principle of natural justice are complied with burden of proof is on the claimant/workman. Learned counsel of the workman has contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s. Bharat Heavy Electricals Ltd. Vs. State of UP Civil Appeal No.2461 of 1999 decided on 21.07.2003***, that adverse inference should be drawn against the management for the non-production of the documents.

13. Contrary to this, BSNL-management in its written statement has not specifically denied nor admitted that he was working with the management directly or an employee of the contractor alleged in the written statement. The documentary evidence filed by the management in the form of Photostat copies in respect of registration and licence are ample proof that it was registered for engaging contractors for the work of establishment by the licencing-authority under the Contract Labour(Regulation and Abolition) Act 1960. But the question for consideration remains same i.e. whether he was engaged by the contractor as is half-heartedly alleged by the management in its written statement. In fact wording of the written statement is not clear to the extent that it is averred in the written statement that he might have been worked with the contractor during the relevant time. Learned counsel of the workman while placing reliance in the case of ***Angrejo Devi Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, CWP No. 14256/12 decided on 13.11.2014*** as well as in the case of ***HMM Coaches Limited now M/s HMM Infra Limited and others Vs. Presiding Officer, Labour Court, Abmala and another, Civil Writ Petition No. 27578 of 2013 (O&M), dated 24.12.2015***, argued that there is no specific averment in the statement of the defence that workman has not directly employed or engaged by the management. Similarly, there is no specific averment in the written statement that he has not completed 240 days as required by Law. As per the learned counsel of the workman, if there is no specific denial of the facts alleged in the claim petition/rejoinder then it is admitted fact which is need not to be proved as per Section 58 of the Indian Evidence Act. The Hon'ble Punjab & Haryana High Court while dealing with the similar case of ***HMM Coaches Limited now M/s. HMM Infra Limited and others Vs. Presiding Officer, Labour Court, Abmala and another, Civil Writ Petition No .27578 of 2013(O&M), dated 24.12.2015***, has held that what is not pleaded is not open to prove. As per the Hon'ble Punjab & Haryana High Court, if facts are not alleged in the pleading then question of its proof is not required under the Law.

14. Learned counsel of the management contended that there is specific pleading that workman might be engaged by the contractor during the relevant time which is proved by the witness of the management namely Prit Pal Singh, JTO, MW1 and Sanjeev Kumar, AGM(Admn.) Bathinda, examined as MW2. So far as cross-examination of MW1 Prit Pal Singh, JTO is concerned, this witness has stated that he has no list of the labour supplied by the contractors. He has also admitted that at the time of providing wages to the labour some officials of the department might have been present. As per this witness, there is no record of casual labour in the department because record of the casual labour was not made by the department till 1999. This witness has specifically admitted that it is correct that log book and battery register are maintained by the department and contract labour is authorised to enter in the exchange. It is pertinent to mention that if log book and battery book are maintained for the purpose of starting the generator in the absence of electric and if these documents are maintained then question arises why it is not produced by the management in spite of all the efforts made by the workman. So far as cross-examination of MW1 Jatinder Channi is concerned, the statement given by this witness does not inspire any confidence because he was not posted at Telephone Exchange, Malout from 16.04.1997 to 05.04.1999 hence, he has no personal knowledge about the workman. The important fact of this witness is that he has accepted that logbook, fault register, battery register, engine alternator register are

maintained in Malout telephone exchange in which the staff used to make entries of all the important events in chronological order. Later on he denied that he has no personal knowledge about the maintenance of the documents at telephone exchange Malout during the said period. He has admitted that when installing a new telephone and jumper slip is issued by the JTO to put through the concerned jumpers to MDF and JDF. The slip is issued by the TTA(Telephone Technical Assistant). No doubt he has stated in his cross-examination that he is not aware of these facts but the practices in concerned-telephone exchange are going in such a manner indicating the facts that he was avoiding to give correct position of the working of the telephone exchange, Malout. This inference is further proved from his statement where he denied the suggestion of the workman-counsel regarding the duty chart taken by the k=incharge telephone exchange, Malout and that the workman used to sign in the logbook from the date of register and other register. It is pertinent to mention that if he was not posted nor has knowledge about the working of the telephone exchange, Malout then how he can deny the suggestion of the workman-counsel about the signature on concerned-documents of the workman.

15. Learned counsel of the workman contended that there is no specific pleading about the name of the contractor engaged during the relevant time as such, statement of the management witness namely Prit Pal Singh and Sanjeev Kumar is not important because they have stated during the cross-examination that their knowledge is based on the documents available on record. As per the learned counsel of the workman, management has not produced the best evidence in their possession to prove that the workman had been employed by the contractor. For the sake of argument, if it is presumed that there was no direct relationship of employer and employee between the management and the workman and the workman has been brought to work in the telephone exchange, Malout, it still requires to maintain the prescribed registers and the records pertaining to the labour as per the provisions of Contract Labour(Regulation & Abolition) Act, 1970. No doubt Prit Pal Singh has at least stated that log book and battery book are maintained by the management. It is worthy of relevance that no department is going to succeed unless duties of the concerned-employees whether it is of management or contractors are prepared on daily basis or weekly basis. Claimant/workman has specifically not only submitted the relevant documents but also stated in his affidavit that weekly duty chart was prepared by the management. I am of the considered opinion that management has to examine at least any of the employee whose name has been mentioned in the duty chart filed by the claimant/workman to disprove the evidence given by the claimant/workman but no effort is made by the management for the reason best known to it. I am of the opinion that management being the principal-employer was legally bound to produce relevant documents maintained for filing of Telephone Exchange Malout as well as the register of contractors under legal obligation to prove that the workman was not directly engaged by the management and he rendered his services under the contractors.

16. Learned counsel of the management Sh. Anish Babbar has vehemently contended that workman has not impleaded the alleged contractor as party in the claim petition as he was under obligation to implead the contractors as party so that best evidence could be produced before the Court to meet the ultimate justice. Learned counsel of the workman contended that the arguments of the learned counsel of the management is not legally tenable because it is his case that workman might have worked under the alleged contractors. Undoubtedly, the initial onus lies with the workman to prove that he was directly engaged through the management but the factum of her employment through contractor is alleged by the management as such, it was always open to the management to implead the alleged contractors as party and if they are not impleaded as party even then management is under legal liability to get their testimonies recorded by producing the alleged contractors for evidence. I am of the opinion that it was necessary on the part of the management to examine the alleged contractors as witness in order to prove that workman was employee of the contractor and not of the management. Hence, in the absence of production of the best evidence, adverse inference against the management is forgone conclusion in the light of the settled position of Law. No doubt in the case of ***Municipal Corporation Vs. Shri Niwas, Appea l(Civil) No.1851 of 2002 decided on 06.09.2004,*** it is held that presumption for not production of the best evidence is always optional rather obligatory as is alleged by the learned counsel of the management but in given circumstances, adverse inference against the management is the only conclusion because of the non-impleadment of the contractors as a party or non-production of the contractor in the light of the documentary evidence as well as statement of the witness WW2 Harphool Singh.

17. So far as the wages and salary of the workman is concerned, it is alleged in the claim petition that he was employed as workman in the office of JTO Indoor, Malout and was drawing Rs.2138/- per month. He has stated in his rejoinder that he worked under the supervision and control and direction of the respondent and was paid by the respondent. Learned counsel of the management contended that factum of salary by the management is not proved by the workman from any documentary evidence. There is no doubt that nothing is on record in the form of documentary evidence that he was paid by the management. In this connection, learned counsel of the workman has contended that payment of salary was subject to the control of the management and burden lies on it to prove that he was not paid monthly wages by the management specifically in the light of the proved fact of employment of the workman in the office of the management. I am convince with the argument of the learned counsel of the workman that no one is going to serve for such a long time without any salary. Apart from this, there is no evidence that he was paid by the contractor mentioned by the management through his witnesses. It is noteworthy that factum of his 240 days with the management is not specifically denied by the management.

18. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that BSNL-establishment has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the BSNL-establishment nor such notices and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case o***f Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal (Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well ***as State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman was rendering his services with the management for a year and he had completed 240 days in the year 1999 before termination by the BSNL-establishment. As per pleading and affidavit of the workman he was terminated from 05.03.1999 without compliance of Section 25-F of the ID Act. Learned counsel of the workman contended in the light of the judgment of the Hon'ble Supreme Court in the case o***f M/s Bharat Heavy Electricals Ltd. Vs. State of U.P. and others, Civil Appeal No. 2459-61 of 1999 decided on 21.07.2003*** that adverse inference should be drawn against the management for the non-production of the documents regarding working days in establishment. Learned counsel of management relying in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas (supra),*** argued that presumption as to adverse inference for non-production of evidence is always optional rather obligatory as is alleged by the learned counsel of the workman. The Hon'ble Supreme Court in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas (supra),*** has held that provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication the general principle provides are however applicable. It is also in pray for the Industrial Tribunal to see that principal of natural justice are complied with the burden of proof is on the claimant/workman to show that he had worked for 240 days in preceding 12 months prior to his alleged retrenchment/termination in terms of Section 25 of the Industrial Disputes Act, 1947.

19. There is no dispute that burden is on the claimant/workman to prove a jurisdictional fact that he put 240 days of services as required by Law. But if the assertion of the workman is not denied by the management either in its written statement or in evidence then neither the question of burden nor onus is required to be discussed in detail. It is specifically stated in replication that he has completed more than 240 days service in each calendar year from 01.01.1996 to 05.03.1999 before his termination without notice and any compensation. It is pertinent to mention that not a single question has been asked to this witness with respect to his 240 days working with management in preceding year from the date of alleged retrenchment. Moreover, if relationship of employer and employee is proved then legally burden lies on the management to prove that workman has not rendered his services for 240 days before retrenchment/termination. It is also noteworthy that management did not produce the best evidence to prove that he had not completed 240 days and it is suddenly fall upon the workman who was compelled by silence of the management to seek all the records when faced with the situation. What is to be noted is that the management did not take the lead to rely on its evidence based on record then by its act of non-production of the attendance and payment records serious suspicion is caused that everything was not alright in the management.

20. So far as the argument of the learned counsel of the respondent regarding the establishment not being an "Industry" is concerned, I am of the opinion that the argument is not legally tenable as is held by several judgments of the Hon'ble Supreme Court. In this connection, the judgment of the Hon'ble Apex Court in the case of ***Bharat Sanchar Nigam Ltd. Vs. Maan Singh, 2012(1), SCT page 641*** and in the case of ***All India Radio versus Santosh Kumar and other etc. Civil Appeal No.2423 of 1989 decided on February 5, 1998***, the Hon'ble Supreme Court specifically held that All India Radio is an `industry` and it was observed in Para 4 of the judgment as follow:-

> **"Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(J) of the Act and the said definition is operative being applicable at present and as exiting on the Statute Book as on date."**

Thus, the contention raised by the learned counsel of the respondent-management that Telecom-department is not an `industry` and the claimant/workman is not a workman under the Act is of no force.

21. The question which remains for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. It is admitted fact that neither notice was served upon the workman by the management nor retrenchment compensation was given to the workman. It is also admitted fact that there was no complaint regarding the service and conduct of the workman. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement with continuity of service. It is proven on record that workman was continuously in the employment of the management from his engagement till 05.03.1999 on regular basis. There is no show cause notice or memo issued to the workman by the management. Moreover, the job of the workman was of perennial and regular nature. Though, the workman has not pleaded anything about his post employment after retrenchment but he has

alleged in his affidavit that he is unemployed from the date of his termination. The management has not pleaded and adduced any evidence to show that the workman was gainfully employed. Thus, nothing is brought on record by the management that workman was employed somewhere after his termination.

22. Learned counsel of the workman contended that in the given scenario, facts and evidences on record, it is crystal clear that respondent/management has retrenched the workman with highhandedness without giving notice or retrenchment compensation as such, he is entitled for reinstatement with continuity of service and entire back wages because he was forced to leave the job without any fault. Contrary to this, learned counsel of the management contended that nothing has been stated in the claim petition as well as affidavit filed by the workman with respect to his alleged post termination with respect to employment. Learned counsel of the management contended that workman was earning as usual by virtue of daily wager after termination as such, he is not entitled for any back wages. Learned counsel has placed reliance in the case of **"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya"** ***reported as (2013) 10 SCC 324*** and ***M/s Caparo Maruti Ltd. Vs. P.O. Industrial Tribunal and another, LPA No.793/2016(O&M) in Civil Writ Petition No.59/2014, dated 30.09.2019.***

23. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimant/workman was working in the management-establishment from 16.04.1997 to 05.03.1999. There is no legal show cause notice or charge-sheet issued to the claimant/workman by respondent/management. Moreover, the job of the claimant/workman is of perennial and regular in nature.

24. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under:-

> ***"The propositions which can be culled out from the aforementioned judgments are:***
>
> *(i)* ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> *(ii)* ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."***

25. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as void ab initio, sometimes as illegal per se, sometime as nullity and sometimes as non-est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

26. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80,*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workman must ordinarily lead to the reinstatement of the services of the workman alongwith payment of back wages.

27. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

28. So far as the facts and evidence of the case is concerned, it is not disputed that workman was alleged to be retrenched in the year 1999. Thus, more than 20 years has been passed in such cases, reinstatement is not possible as is held by the Ho'ble Supreme Court in the case o***f Gujarat State Road Transport Corporation and others Vs. Maluambra (1994) II, LLJ 552 as well as in State Steel Products Vs. Nagpal Singh and others, AIR 2001, SCW 2426***. The Hon'ble Supreme Court in its latest judgment in the case o***f State Uttrakhand and others Vs. Raj Kumar (2019) 14 SCC page 353***, has confirmed the above preposition laid down in the above mentioned cases.

29. Having regard to the legal position as discussed above and the facts that the claimant/workman herein was performing duties of regular and perennial nature, this Tribunal is of the firm view that the claimant/workman has been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that he has specifically pleaded that he is unemployed since his retrenchment/termination. Moreover, nothing has been cross-examined from this witness regarding his employment/termination as such, the factum of his unemployment is unrebutted as management has not submitted any cogent evidence with respect to his future employment after the alleged retrenchment/termination. But looking the period of retrenchment, this Tribunal is of the opinion that compensation will be the appropriate remedy instead of reinstatement. Hence, lump sum amount of Rs.3 lac will be appropriate remedy as compensation. Management is directed to pay the compensation amounting Rs.3 lac within three months from the notification of the award.

30. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 9 सितम्बर, 2021

का.आ. 606.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स औम प्रकाश राजेंद्र सिंह एंड कम्पनी ,बीकानेर (राजस्थान) ; कार्यालय अभियंता सीमा हदबन्दी, केंद्रीय लोक निर्माण विभाग, जैसलमेर- (राजस्थान) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री सन्तोष कुमार मोडसरा, कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय- जयपुर (राजस्थान) के पंचाट (संदर्भ संख्या 41/2017) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल-42012/46/2017-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 9th September, 2021

S.O. 606.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 41/2017) of the Central Government Industrial Tribunal-cum-Labour Court–Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to M/s. Om Prakash Rajendra Singh & Company, Bikaner (Rajasthan); The Executive Engineer Boundary Delimitation, Central Public Works Department, Jaisalmer (Rajasthan) and Shri Santosh Kumar Modsara, Workers which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-42012/46/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 41 /2017

रेफरेन्स नं. L-42012/46/2017–IR(DU) दिनांक 26/09/2017

पीठासीन अधिकारी : राधामोहन चतुर्वेदी, सन्तोष कुमार मोडसरा पुत्र श्री उदाराम मोडसरा, निवासी वी.पी.ओ. ढुकरियासर, तहसील श्री डूंगरगढ़, जिला – बीकानेर, राजस्थान

बनाम

1. मैसर्स औम प्रकाश राजेन्द्र सिंह एण्ड कम्पनी, पूगल रोड, सर्वोदय बस्ती, बंगला नगर, पोस्ट ऑफिस के पास, आर्शीवाद भवन के सामने, बीकानेर, जरिए राजेन्द्र सिंह सारण

2. कार्यालय अभियन्ता सीमा हदबन्दी, मण्डल–6, केन्द्रीय लोक निर्माण विभाग, जिला–जैसलमेर, 345001 राजस्थान ।

प्रार्थी की ओर से : श्री प्रदीप सिंह – अभिभाषक

अप्रार्थीगण की ओर से : कोई नहीं

: **अधिनिर्णय** :

दिनांक : 25.03..2021

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 26.09.2017 को औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा (1) (क) व (2।) (जिसे आगामी चरणों में अधिनियम कहा जावेगा) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित औद्योगिक विवाद इस अधिकरण को अधिनिर्णयन हेतु प्रेषित किया गया :–

> "क्या अप्रार्थी मैसर्स ओमप्रकाश राजेन्द्र सिंह एण्ड कंपनी, पूगल रोड, सर्वोदय बस्ती, बंगला नगर पोस्ट ऑफिस के पास, आर्शीवाद भवन के सामने, बीकानेर द्वारा श्री संतोष कुमार मोडसरा पुत्र उदाराम मोडसरा को मौखिक आदेश दिनांक 30.11.2015 के द्वारा नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?"

2. उपर्युक्त संदर्भित विवाद इस अधिकरण में प्राप्त होने पर उभयपक्ष को आहूत करते हुए प्रार्थी से अपेक्षा की गई कि वह अपने दावे का अभिकथन प्रस्तुत करें। तदुपरान्त दिनांक 24.1.18 से 6.11.2018 तक पीठासीन अधिकारी का पद रिक्त रहा। अन्ततः दिनांक 2.7.19 को प्रार्थी ने अपने दावे का अभिकथन प्रस्तुत किया।

3. प्रार्थी का कथन है कि अप्रार्थी संख्या 1 जिसका मुख्य कार्यकारी राजेन्द्र सिंह सारण हैं। एक ठेकेदारी फर्म है। जो सी.पी.डब्ल्यू.डी. में कार्य करती है। यह फर्म अप्रार्थी संख्या 2 सीमाहद बन्दी मंडल 6 केन्द्रीय लोक निर्माण विभाग, जैसलमेर के अन्तर्गत कार्य करती थी। प्रार्थी भूतपूर्व सैनिक है। जिसकी नियुक्ति 1.9.2010 को अप्रार्थी फर्म के कार्य हेतु 12 हजार मासिक वेतन पर की गई। फर्म के साझेदार और अधिकृत व्यक्ति राजेन्द्र सिंह सारण द्वारा प्रार्थी को नियुक्ति पत्र जारी किया गया। प्रार्थी का कार्य कार्यस्थल की देखरेख तथा लेखा संधारण करना था। सितम्बर 2010 से नवम्बर 2015 तक प्रार्थी अप्रार्थी संख्या 2 के अधीन विभिन्न कार्यस्थलों पर कार्यरत रहा। प्रार्थी श्रमिक एवं फर्म के भागीदार के मध्य श्रमिक एवं नियोक्ता के संबंध है। प्रार्थी ने घरेलू आवश्यकतावश अप्रार्थी संख्या 1 से बकाया वेतन की मांग की तो

अप्रार्थी संख्या 1 ने 30.11.2015 को मौखिक रूप से प्रार्थी को सेवा से मुक्त कर दिया। पुनः प्रार्थी ने बकाया वेतन की मांग की तो अप्रैल 2016 में अप्रार्थी फर्म द्वारा 4लाख 60 हजार रुपये का भुगतान चेक से किया तथा शेष वेतन शीघ्र देने का आश्वासन दिया। प्रार्थी ने सेवामुक्ति के पूर्व विपक्षी के अधीन 240 दिन से अधिक कार्य किया है लेकिन अप्रार्थी ने सेवामुक्ति के पूर्व ना तो बकाया वेतन दिया और ना ही नोटिस या नोटिस वेतन या मुआवजे का भुगतान किया। अधिनियम की धारा 25 (एफ), (जी) एवं नियम 77 की अवहेलना करते हुए कोई वरिष्ठता सूची नहीं बनाई और अवैध रूप से प्रार्थी की सेवा समाप्त कर दी तब से ही प्रार्थी बेरोजगार है। अतः सेवासमाप्ति को अवैध घोषित करते हुए प्रार्थी को सेवा में निरन्तरता सहित बकाया वेतन एवं परिलाभ दिलाये जाने सहित सेवा में बहाल किया जावे।

4. अप्रार्थी संख्या 1 ने अधिकरण द्वारा जारी नोटिस को लेने से इन्कार कर दिया तथा अप्रार्थी संख्या 2 नोटिस प्राप्ति के उपरान्त भी उपस्थित नहीं हुआ। इसलिये दिनांक 9.10.2019 को विपक्षीगण के विरूद्ध एकपक्षीय कार्यवाही किया जाना आदेशित किया गया।

5. प्रार्थी ने अपने एकपक्षीय साक्ष्य में स्वंय प्रार्थी सन्तोष कुमार मोडसरा का शपथपत्र प्रस्तुत किया। एवं प्रलेखिय साक्ष्य में प्रदर्श–डब्ल्यू 1 से प्रदर्श–डब्ल्यू 8 तक प्रलेखों को प्रदर्शित किया।

6. दिनांक 10.03.2021 को प्रार्थी के अभिभाषक द्वारा लिखित बहस प्रस्तुत की गई और मौखिक तर्क भी प्रस्तुत किये गये।

7. प्रार्थी की और से दावे के अभिकथन में वर्णित तथ्यों को अपने लिखित तर्क में पुनरावृत्त किया गया है और यह कहा है कि विपक्षी की और से प्रार्थी के अभिवचनों और शपथ पर प्रस्तुत की गई साक्ष्य का कोई खंडन नहीं किया गया है। इसलिये प्रार्थी का पक्ष दावे के अनुरूप प्रमाणित होता है। प्रदर्श–डब्ल्यू 2 नियुक्ति पत्र की ओर ध्यान आकृष्ट करते हुये प्रार्थी का तर्क है कि दि.1.9.2010 को प्रार्थी की नियुक्ति 12 हजार रुपये मासिक वेतन पर अप्रार्थी संख्या 1 द्वारा किया जाना प्रमाणित है। प्रदर्श–डब्ल्यू 3 तालिका में प्रार्थी को देय कुल वेतन और औवरटाईम भत्ता विपक्षी द्वारा दिये गये चेक की राशि 4 लाख 60 हजार रुपये को समायोजित करते हुये शेष राशि 5 लाख 79 हजार शेष होना प्रमाणित होता है। प्रार्थी ने केन्द्रीय लोक निमार्ण विभाग को प्रदर्श–डब्ल्यू 4 पत्र लिखकर वेतन भुगतान की मांग की थी जिस पर विभाग ने प्रदर्श–डब्ल्यू 6 पत्र अप्रार्थी संख्या 1 को लिखा था। प्रार्थी ने क्षेत्रीय श्रमायुक्त जयपुर को समझौता हेतु निवेदन किया। किन्तु समझौता वार्ता विफल होने पर 30.6.2017 को समझोता वार्ता विफल होने का प्रतिवेदन उन्होंने दिया जो प्रदर्श–डब्ल्यू 8 है इस प्रकार प्रार्थी ने विपक्षी से अनुतोष प्राप्त करने हेतु पूर्ण प्रयास किये जो विफल रहे। अतः दावे का अभिकथन यथावत स्वीकार किया जावें। उन्होने अपने तर्क के समर्थन में निम्नांकित निर्णय प्रस्तुत किये है :–

(1) W.L.C. 2004 (Raj.) U.C. 650 स्टेट ऑफ राजस्थान बनाम जज लेबर कोर्ट बीकानेर

(2) W.L.C. 2003 (Raj.) U.C. 523 n जनरल मैनेजर बनाम लेबर कोर्ट व अन्य प्रस्तुत किये।

8. मैनें प्रार्थी द्वारा प्रस्तुत लिखित एवं मौखिक तर्क, एकपक्षीय साक्ष्य तथा निर्णयों में पारित विधि पर ध्यानपूर्वक विचार किया।

9. इस विवाद में निम्नांकित बिन्दु विचरणीय हैः–

विचारणीय बिंदु सं. 1 :– क्या अप्रार्थी संख्या 1 द्वारा प्रार्थी को दि. 1.9.2010 को 12 हजार रुपये मासिक वेतन पर नियोजित किया गया तथा 30 नवम्बर 2015 को प्रार्थी को मौखिक रूप से सेवामुक्त कर दिया जो अधिनियम की धारा 25 (एफ) के प्रावधानों के विपरीत होने से अवैध है ?

विचारणीय बिंदु सं. 2 :– क्या विपक्षी संख्या 1 ने प्रार्थी को नवंबर 2015 तक बकाया वेतन 5 लाख 79 हजार रुपये का भुगतान नहीं किया ?

विचारणीय बिन्दु सं. 3 : अनुतोष :–

प्रत्येक विचारणीय बिंदु पर विवेचित निर्णय इस प्रकार हैः–

10. **विचारणीय बिंदु संख्या 1** :– यह उल्लेखनीय है कि प्रार्थी के दावे के अभिकथन का कोई खंडन विपक्षी सं. 1 व 2 ने नहीं किया है जबकि उन्हें नोटिस एवं दावे का अभिकथन प्रेषित किया गया था किन्तु अप्रार्थी संख्या 1 ने लेने से इन्कार कर दिया। प्रार्थी ने अपने साक्ष्य के शपथपत्र में कहा है कि फर्म के साझेदार एवं अधिकृत व्यक्ति राजेन्द्र सिंह सारण द्वारा प्रदर्श–डब्ल्यू 2 नियुक्ति पत्र प्रार्थी को जारी किया गया। इस कथन का कोई खंडन विपक्षी की स्वेच्छया अनुपस्थिति के कारण नहीं हुआ है। इसलिये प्रदर्श–डब्ल्यू 2 नियुक्ति पत्र के आधार पर दिनांक 1.9.2010 को प्रार्थी की नियुक्ति अप्रार्थी संख्या 1 द्वारा 12 हजार रुपये मासिक वेतन पर किया जाना प्रमाणित होता है। प्रार्थी का आगामी कथन है कि उसने अपनी घरेलू आवश्यकतावश माह नवंबर 2015 में विपक्षी संख्या 1 से बकाया वेतन की मांग की। इस प्रकार मांग करने पर फर्म के भागीदार राजेन्द्र सिंह सारण ने मौखिक आदेश द्वारा 30.11.15 को प्रार्थी को नौकरी से कार्यमुक्त कर दिया। अधिनियम की धारा 25 (एफ) के प्रावधान के तहत प्रार्थी को छंटनी मुआवजा, सेवासमाप्ति से पूर्व कोई नोटिस अथवा नोटिस वेतन नहीं दिया गया। प्रार्थी ने यह भी कहा है कि सेवासमाप्ति से पूर्व प्रार्थी ने विपक्षी संख्या 1 के अधीन विगत 1 वर्ष में लगातार 240 दिन से अधिक कार्य किया है। इन कथनों का कोई खंडन विपक्षी संख्या 1 द्वारा अवसर दिये जाने के उपरान्त भी नहीं किया गया है। प्रार्थी के नियुक्ति पत्र प्रदर्श–डब्ल्यू 2 के आधार पर प्रार्थी का यह साक्ष्य किसी खंडन के अभाव में स्वीकार्य प्रमाणित होता है। प्रार्थी ने 30.11.2015 को विपक्षी

द्वारा मौखिक रूप से सेवामुक्त किया जाने का जो सशपथ कथन किया है किसी खंडन के अभाव में स्वीकार किये जाने योग्य लगता है। चूंकि प्रार्थी को सेवासमाप्ति के पूर्व विपक्षी संख्या 1 ने एक माह का नोटिस अथवा नोटिस वेतन एवं छंटनी प्रतिकर का भुगतान नहीं किया इसलिये विपक्षी संख्या 1 द्वारा, जो प्रार्थी का नियोजक भी है अधिनियम की धारा 25 (एफ) के प्रावधानों का उल्लंघन किया जाना भी प्रमाणित होता है। अतः यह विचारणीय बिंदु प्रार्थी के पक्ष में निर्णीत किया जाता है।

11. **विचारणीय बिंदु संख्या 2 :–** प्रार्थी ने अपने सशपथ कथन में प्रदर्श–डब्ल्यू 3 स्वंय द्वारा हिसाब प्रदर्शित किया है। प्रार्थी ने कहा है कि 1.9.2010 से नवंबर 2015 तक प्रार्थी को देय कुल वेतन 10 लाख 39 हजार रुपये हुआ। जिसमें से प्रार्थी को राशि 4 लाख 60 हजार रुपये का भुगतान दिया गया। शेष वेतन 5 लाख 79 हजार आज भी बकाया है। यद्यपि प्रार्थी के इन कथनो का कोई खंडन विपक्षीगण ने नहीं किया है किन्तु, यह दृष्टव्य है कि प्रार्थी ने अपने दावे के अभिकथन में तथा साक्ष्य में भी औवरटाईम भत्ते का भुगतान बकाया होना वर्णित ही नहीं किया है। प्रार्थी ने यह भी नहीं बताया है कि उसने प्रत्येक माह में कितने दिन औवरटाईम कार्य किया और किस प्रकार 3 हजार रुपये तथा 5 हजार रुपये प्रतिमाह औवरटाईम भत्ता उसे देय है। इसलिये इस अधिकरण के सुविचारित अधिमत से प्रार्थी विपक्षी संख्या 1 से औवरटाईम भत्ता प्राप्त करने का अधिकारी प्रमाणित नहीं होता है। प्रार्थी के अभिवचनों के अभाव में प्रस्तुत साक्ष्य प्रदर्श–डब्ल्यू 3 हिसाब यथावत स्वीकार्य नहीं है तथा औवरटाईम भत्ते की राशि प्रार्थी द्वारा मांगी गई राशि में से कम किये जाने योग्य है। इस गणना के अनुसार प्रार्थी को सितम्बर 2010 से नवंबर 2015 तक 63 माह का कुल वेतन 7 लाख 56 हजार देय होता है। प्रार्थी ने इस राशि में से 4 लाख 60 हजार रुपये प्राप्त हो जाना स्वीकार कर लिया है। इस प्रकार शेष राशि 2 लाख 96 हजार रुपये प्रार्थी विपक्षी संख्या 1 से बकाया वेतन के रूप में प्राप्त करने का अधिकारी प्रमाणित होता है। अतः यह बिंदु आंशिक रूप से प्रार्थी के पक्ष में निर्णित किया जाता है।

12. **अनुतोष :–** प्रार्थी ने अपने दावे के अभिकथन में यह तथ्य स्वीकार किया है कि वह एक्स सर्विसमैन है। माननीय राजस्थान उच्च न्यायालय ने अपने निर्णय स्टेट ऑफ राज./जज लेबर कोर्ट व दी जनरल मैनेजर/दी लेबर कोर्ट व अन्य में यह अधिमत दिया है कि छंटनी को अवैध घोषित किये जाने पर सेवा में निरंतरता व पुनः स्थापन का निर्णय उचित है। विगत वेतन दिलवाया जाना भी पुनः स्थापन सहित उचित है जब तक कि नियोजक यह सिद्ध न कर दे कि कर्मकार अन्यत्र लाभार्थ नियोजित रहा है। इस स्वीकारोक्ति व निर्णयों में पारित विधि से यह स्पष्ट है कि भूतपूर्व सैनिक होने के कारण प्रार्थी को कुछ धनराशि पेंशन के रूप में प्रतिमाह मिलती रही है। प्रार्थी ने यह भी कहा है कि वह सेवासमाप्ति के बाद बेरोजगार हैं इस तथ्य का भी कोई खंडन विपक्षी द्वारा नहीं किया गया है। इसलिये समस्त परिस्थितियों को ध्यान में रखते हुये प्रार्थी की सेवासमाप्ति, अधिनियम की धारा 25 (एफ) के अर्न्तगत अवैध प्रमाणित होने से प्रार्थी को सेवा में निरन्तरता सहित सेवासमाप्ति से पुनः स्थापन तक 50 प्रतिशत विगत वेतन विपक्षी से दिलवाया जाना न्यायोचित प्रतित होता है।

13. अतः इस संदर्भित विवाद का उत्तर देते हुये दि. 30.11.15 को विपक्षी संख्या 1 द्वारा की गई प्रार्थी की सेवासमाप्ति अवैध घोषित की जाती है। विपक्षी संख्या 1 प्रार्थी को पुनः नियोजन में 50 प्रतिशत विगत वेतन सहित तथा 2 लाख 96 हजार बकाया वेतन का भुगतान कर पुनः नियोजित करें। इस अधिनिर्णय का अनुपालन विपक्षी संख्या एक 3 माह की अवधि में करे अन्यथा देय राशि पर 6 प्रतिशत वार्षिक ब्याज दर से ब्याज प्रार्थी विपक्षी संख्या 1 से पाने का अधिकारी होगा। विपक्षी संख्या 2 के विरूद्ध प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

14. श्रम मन्त्रालय भारत सरकार द्वारा इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

15. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 9 सितम्बर, 2021

का.आ. 607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, भटिंडा (पंजाब) के प्रबंधतंत्र के संबद्ध नियोजकों और मेजर सिंह, सी/ओ श्री. एन.के. जीत, 27349, लाल सिंह बस्ती रोड, भटिंडा (पंजाब) कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1010/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल-40012/272/2001-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 9th September, 2021

S.O. 607.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1010/2005) of the Central Government Industrial Tribunal - cum-Labour Court–II, Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Telecom, Bhatinda (Punjab) and Shri Major Singh, C/o Sh. N. K. Jeet, 27349, Lal Singh Basti Road, Bhatinda (Punjab) Worker which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-40012/272/2001-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No.1010/2005

Registered On:-14.01.2002

Sh. Major Singh, C/o Sh. N.K. Jeet, 27349, Lal Singh Basti Road,
Bhatinda (Punjab))-151001. ... Workman

VERSUS

The General Manager, Telecom, E 10-B Building,
Behind HPO, Bhatinda (Punjab)-151001. ... Management

AWARD

Passed On:-09.08.2021

Central Government vide Notification No. L-40012/272/2001-IR(DU) Dated 31.12.2001, under clause (d) of Sub-Section (1) and sub-Section (2A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial Dispute for adjudication to this Tribunal:-

"Whether the action of the management of General Manager, Telecom, Bhatinda in terminating the services of Sh. Major Singh S/o Sh. Pritam Singh, workman w.e.f. 1/3/99 is just and legal? If not to what relief the workman is entitled to and from which date?"

1. In brief, the facts are that the workman was serving as workman in Telecom Excharge Mansa, on a permanent job since 14.10.1993 and was drawing Rs.2138/- as monthly wage. The services of the workman were terminated on 01.03.1999 without notice, charge-sheet, enquiry and compensation. The termination of the services of the workman is illegal, null and void, against the provisions of the Industrial Disputes Act, 1947 and against the principles of natural justice. The juniors to the workman have been retained in service and even new hands have been recruited without calling the workman. The workman is unemployed since the termination of his services. A demand notice under Section 2-A of the Industrial Disputes Act, 1947 was served upon the respondent-management on 07.07.1999 wherein the workman was requested to take back her on duty with continuity of service, full back wages with interest and cost failing which the workman was to be liable for all legal consequences but respondent-management has refused to take back the workman on duty. It is therefore, prayed that the workman may kindly be reinstated with continuity of service and with full back wages along with interest and any other benefit which this Hon'ble Court may deem fit and proper.

2. Respondent-management filed its written statement, alleging therein that the Telecom Services (now known as B.S.N.L.) is not an industry nor the claimant is a workman as decided by the Hon'ble Supreme Court in case reported in AIR 1996-SC-1271. The workman was not appointed as workman by the respondent w.e.f. 14.10.1993. It is denied that the workman was being paid Rs.2138/- per month. The respondent has not paid even a single penny to the workman. The management has entered into a contract agreement with the contractor for the supply of labour for the performance of emergency work in the department as a result of which, the contractor engaged manpower as per agreement (Annexure R-2). The payment was directly made to the contractor and the department is having no record to reveal that the workman has actually worked with the erstwhile-department. The workman cannot claim any relief against the erstwhile-department of Telecommunication Services which has been converted into a P.S.U. known as BSNL w.e.f. 01.10.2000. The workman was neither engaged/recruited by the management nor he had been the member of the service nor any appointment letter was issued so the question of termination of his service does not arise by the management. The workman was not recruited according to the recruitment rules by the management nor his services governed

under the rules as applicable to the other employees. Therefore, the liability of the contractor cannot be passed on the management. Since the workman was never engaged nor terminated by the management therefore, question of granting any compensation, notice pay etc. does not arise. In view of the submission made above, it is respectfully prayed that the claim petition filed by the workman be dismissed with costs.

3. Workman filed replication to the written statement filed by the management, alleging therein that he was employed as a casual labourer/workman by the respondent-department in accordance with the rules to work in Telephone Exchange, Mansa continuously from 14.10.1993 to 01.03.1999. The contractor, if any, was nowhere in the picture. The workman had worked under the direct supervision and complete control of the respondent-management. It was statutory duty of the management to maintain record of the labourers supplied by the contractor if any engaged in accordance with the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and the telecom installations being prohibited places under the relevant laws. Payment of wages were also being made to the workman by the management. The record of attendance and duty performed by the claimant/workman are available with the respondent-management. Neither the respondent-management was registered, nor the said contractor was licenced with the appropriate-authority under the Contract Labour (Regulation & Abolition) Act, 1970. The remaining facts alleged in the replication are same as alleged in the claim statement as such, need not to be repeated again.

4. Claimant/workman Major Singh has submitted his affidavit and proved it as Ex.WW1 and cross-examined by the learned counsel of the management.

5. Management has submitted affidavit of witness Baldev Kishan, CAO (Legal) as MW1 as well as witness Sanjeev Kumar, AGM (Admn.) as MW2 who were cross-examined by the learned counsel of the workwoman.

6. Heard the learned counsel of the workman Sh. Hitesh Verma as well as learned counsel of the management Sh. Anish Babbar and perused the file.

7. Before averting to the real controversy between the parties, it will be pertinent to mention that claim petition is earlier decided by my learned predecessor vide Award Dated 17.09.2005 against which Civil Writ Petition No. 20930/2015 is preferred by the claimant/workman Major Singh which is ultimately decided by the Hon'ble Punjab & Haryana High Court vide its order dated 04.02.2020 with the observation that parties be given two opportunities each to lead evidence and award be decided preferably within 6 months but not later than one year from the receipt of the certified copy of the order. In pursuance of the order of the Hon'ble Punjab & Haryana High Court, opportunity is given to the workman to produce evidence but workman refused to give any evidence relying on previous evidence vide its statement dated 23.07.2020. Contrary to this, management has submitted the affidavit of Sanjeev Kumar, AGM (Admn.), Bathinda along with the photocopies of agreements from the year 1994 to 1999 who has been cross-examined by the learned counsel of the workman.

8. The first contention is regarding the claimant to be a workman even if he was appointed on job basis for a particular time or subject to regular appointment as a workman. To my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

9. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such

evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.***

10. Question remains to be seen whether claimant/workman has proved that he was directly engaged by the respondent-management on 14.10.1993 and rendered his services till the alleged retrenchment/termination. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workman/claimant was directly employed by the respondent-management. In this connection, workman Major Singh has accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Sanjeev Kumar, AGM(Admn.), Bathinda has categorically stated in his evidence that he was not employed by the management as such, neither notice nor retrenchment compensation was given by management.

11. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014,*** two well recognised tests to find out whether the labours are the contract employees of the principal employer as follows:-

(1) Whether the principal employer pays the salary instead of contractor and

(2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workman. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workman has not mentioned anything regarding the mode of payment of wages, salaries etc. in his affidavit. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workman.

12. Learned counsel of the workman contended that payment of salary was made by the management as is alleged in the claim petition as well as affidavit filed and it was the management who virtually paid the salary. Learned counsel of the workman contended that all the documents are in possession of the management and in spite of the request made by the claimant/workman and order of the Tribunal, management did not submit any document relating to the engagement as well as salary by saying that it has no documents because workman was not directly engaged by the management. In this connection, learned counsel of the workman has contended that payment of salary was subject to the control of the management and it was the management who virtually paid the salary to the amount of Rs.1100/- to Rs.1200/- instead of agreed amount as is stated by the claimant/workman during the course of cross-examination. I am not satisfied with the arguments of the learned counsel of the workman as nothing is mentioned in pleading/claim petition as well as affidavit submitted by the witness in support of the claim petition. It is also pertinent to mention that nothing is on record in the form of documentary evidence that the workman was directly paid by the management. It is surprising that the witness has not stated in his affidavit about the amount of salary or wages payable to him either by the management or by the contractor. Thus, on this issue, firstly, it can be incurred that there is nothing on record to prove the factum of direct payment of salary by the management.

13. Secondly, so far as the question of controls and supervision is concerned. Workman has categorically stated that his work was controlled and supervised by the officials of the management. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimant/workman. The apex court while explaining the factor of supervision and control in the case of ***International Airport Authority of India vs. International Air Cargo Workers Union [209 (13) SCC374]*** has held as follows:-

> ***"If the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.***
>
> ***The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal***

employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

14. Thus, the principal enunciated by the Hon'ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimant/workman is mum on this score and workman has not mentioned any specific averment in his affidavit regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing on record to prove that it is the management who grant the leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witness may not be called effective and absolute control. Such control is being emphasised to control the work of the management for a specific work in efficient manner done by the management in the establishment.

15. Undoubtedly, in Tribunal cases, has to be decided on the basis of the preponderance of probability and not the proof beyond reasonable doubt. So far as this case is concerned, there is no documentary evidence on record to prove the factum of direct employment of workman with the management. In any way nothing is on record with respect of the payment of salary, attendance register or work done by the claimant/workman during the course of alleged employment with the management. The evidence of workman Major Singh given during the course of cross-examination does not convince this Tribunal with respect to the direct employment with the management. According to this witness, the management had notified the post in the newspaper and in pursuance of the publication in newspaper he had approached the Tribunal. He has further stated that he does not possess the copy of the newspaper which carried advertisement. Similarly, this witness has stated that he has no any document or evidence to show that he was getting Rs.2138/- as monthly salary. As per this witness, he has not complained to anyone with respect of his dis-engagement but he demanded his remaining amount which is not paid by the management. He has further admitted that he had not complained about the wages to the Labour Commissioner. During the course of cross-examination he has stated that he has record relating to his employment with the management and work done by him during the employment may be produced by him. Despite of the opportunity being given by the Tribunal to produce the documents nothing is brought on record as documentary evidence to prove that he was directly employed by the management.

16. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that management has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the management nor such notice and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal(Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman is rendering his services with the management for so many years and he had completed 240 days in the year 01.03.1999 before termination by the management. As per pleading of the workman he was terminated from 01.03.1999 without compliance of Section 25-F of the ID Act. It is pertinent to mention that pleadings required specific averments with respect to the facts alleged in it. It is not specifically pleaded that workman was retrenched/terminated by the management in corresponding year i.e. on 01.03.1999 even he had rendered 240 days of service in the management. Thus, there is no specific pleading with respect to the working of 240 days in preceding year of the alleged termination. In the affidavit filed by the workman, it is alleged in general that he has served 240 days in the telecom-management. Thus, this is a general assertion for rendering services with the management rather specific averments with respect to the 240 days in the preceding year before the termination. Thus, claim petition as well as affidavit filed by the workman nothing is stated with respect to the working of 240 days before the preceding year of the alleged termination by the management. In the light of the specific denial by the management for rendering services with the management, burden lies on the workman to prove this fact. Hon'ble Supreme Court in the case of ***Range Forest Officer Vs. S.T. Hadimani, (2002)3 SCC 25,*** has held that if there is no proof of receipt of salary or wages of 240 days or order or record in this regard was produced then mere non-production of the muster roll for a particular period is not sufficient for the Labour Court to hold that workmen had worked for 240 days as claimed. Thus, as per the Hon'ble Supreme Court in order to prove the working of 240 days, receipt of salary or wages as the case may be are relevant for the consideration by the Tribunal. Learned counsel of the workman contended that all these documents are with the management and they have not submitted before this Tribunal. Learned counsel of the management contended that this is a case of specific denial by the management as such, question of submission of any document

pertaining to the payment of wages or salary or attendance register or muster roll etc. does not arise to be submitted by the management. Learned counsel of the workman contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s Bharat Heavy Electricals Ltd. Vs. State of U.P. and others, Civil Appeal No.2459-61 of 1999 decided on 21.07.2003*** that adverse inference should be drawn against the management for the non-production of the documents. Learned counsel of management relying in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** argued that presumption as to adverse inference for non-production of evidence is always optional rather obligatory as is alleged by the learned counsel of the workman. The Hon'ble Supreme Court in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas(supra),*** has held that provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication the general principle provides are however applicable. It is also in pray for the Industrial Tribunal to see that principal of natural justice are complied with the burden of proof is on the claimant/workman to show that he had worked for 240 days in preceding 12 months prior to his alleged retrenchment/termination in terms of Section 25 of the Industrial Disputes Act, an order retrenching a workman could not be effective unless the condition precedent therefore satisfied. From the perusal of the file, it appears that the workman has not adduced any evidence whatsoever in support of his contention that he has completed 240 days continuously before alleged termination/retrenchment and complied with the requirement of Section 25-B of the Industrial Disputes Act, 1947.

17. The Hon'ble Supreme Court in the case of ***Range Forest Officer Vs. S.T. Hadimani(supra),*** has held as follow:-

> ***"In our opinion, the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more that 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but his claim was so denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for his period was produced by the workman. On this ground alone, the award is liable to be set aside."***

18. Conclusively it may be observed that the workman may have rendered his services under the contractors from 14.10.1993 as there is sufficient evidence to prove that from the year 1994 onwards 1999 contractors were engaged by the management in the light of the statement of Sanjeev Kumar, AGM (Admn.) supported with the photostat copies of the agreements produced by the witness of the management Sanjeev Kumar, AGM (Admn.). Legally the initial burden lies with the workman to prove that he was working initially with the telecom-department which is subsequently know as BSNL accordingly. As such, the workman is not liable for any relief from this Tribunal and the reference is answered accordingly.

19. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 9 सितम्बर, 2021

का.आ. 608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, भटिंडा (पंजाब) के प्रबंधतंत्र के संबद्ध नियोजकों और श्रीमती स्वीटी सिंगला, सी/ओ श्री. अध्यक्ष, दूरसंचार मजदूर संघ, मोहल्ला हरि नगर, लाल सिंह बस्ती रोड, भटिंडा (पंजाब) कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 809/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल-40012/176/99-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 9th September, 2021

S.O. 608.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 809/2005) of the Central Government Industrial Tribunal -cum-Labour Court –II, Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Telecom, Bhatinda (Punjab) and Smt. Sweety Singla, C/o Sh. The President, Telecom Labour Union, Mohalla Hari Nagar, Lal Singh Basti Road, Bhatinda (Punjab) Worker which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-40012/176/99-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 809/2005

Registered On:-12.10.1999

Smt. Sweety Singla, C/o Sh. The President, Telecom Labour Union,
Mohalla Hari Nagar, Lal Singh Basti Road, Bhatinda (Punjab))-151001. ...Workwoman

VERSUS

The General Manager, Telecom, Bhatinda (Punjab)-151001. ...Management

AWARD
Passed On:-12.08.2021

Central Government vide Notification No.L-40012/176/99-IR(DU) Dated 29.09.1999, under clause (d) of Sub-Section (1) and sub-Section (2A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial Dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of General Manager, Telecom, Bhatinda in terminating the services of Ms. Sweety Singla just and legal? If not what relief the workman is entitled to and from which date?"**

1. In brief, the facts are that the workwoman was serving as Clerk in TRA O/o G.M. Telecom, Bathinda, on a permanent job since 27.01.1997 and was drawing Rs.2140/- as monthly wage. The services of the workwoman were terminated on 31.12.1997 without notice, charge-sheet, enquiry and compensation. The termination of the services of the workwoman is illegal, null and void, against the provisions of the Industrial Disputes Act, 1947 and against the principles of natural justice. The juniors to the workwoman have been retained in service and even new hands have been recruited without calling the workwoman. The workwoman is unemployed since the termination of her services. A demand notice under Section 2-A of the Industrial Disputes Act, 1947 was served upon the respondent-management on 20.09.19998 wherein the workwoman was requested to take back her on duty with continuity of service, full back wages with interest and cost failing which the workwoman was to be liable for all legal consequences but respondent-management has refused to take back the workwoman on duty. It is therefore, prayed that the workwoman may kindly be reinstated with continuity of service and with full back wages along with interest and any other benefit which this Hon'ble Court may deem fit and proper.

2. Respondent-management filed its written statement, alleging therein that the Telecom Distt. Engineer (now General Manager Telecom) Bhatinda was granted certificate of registration on 23/28.12.1994 (Annexure R-1) under sub-section 2 of section 7 of contract labour(Regulation and Abolition) Act, 1970 and Rules framed thereunder. The management has entered into a contract agreement dated 26.06.1996(Annexure R-2) which Sh. Amarjit Singh Bajwa of Amritsar and dated 01.04.1997(Annexure R-3) which Sh. Ashok Kumar Garg, Govt. Contractor, Rampuraphul for supply of contract labour. Therefore, the said contractor was liable to maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars like attendance/disengagement etc. as provided under section 29 of the Contract Labour(Regulation and Abolition) Act, 1970. The workwoman might be working under the answering-respondent through the aforesaid contractor on daily wages basis and a daily wage employee canot claim to have acquired any right to hold a civil post. The Department of Telecom has imposed a partial ban vide their letter No.270-6/84-STN dt. 30.03.1985(Annx. R-7) for engagement of casual labourer for any type of work. In para 3 of the said letter, it has been stated that these

order will not apply to casual labourer for co-axial cable laying work in project organization and in line dismantling/construction work in Electrification Project Circles. The order of the Department of Telecom dated 12.02.1999 abolishing the system of engaging the casual labourer through contractor is perfectly in order and in conformity with the observations made by the Hon'ble Apex Court in the judgment titled as ***Secretary H.S.E.B. Vs. Suresh Kumar & Others JT 1999(2) SC 435***. The workwoman was neither appointed in the cadre of clerk by the management of General Manager Telecom Distt. Bhatinda nor recruited in any job directly, the question of terminating the services illegally or misusing the powers does not arise. In view of the submission made, the statement of claim submitted by the workwoman lacks substance and merits therein hence, the same is liable to be dismissed.

3. Workwoman filed replication to the written statement filed by the management, alleging therein that the claimant/workwoman worked in the office of AOTRA O/s GMT Bathinda from 27.01.1997 to 31.12.1997 and was allotted work and supervised by the management. The contractor, if any, was nowhere in the picture. Neither the management was validly registered nor the said contractor was having a valid licence under the Contract Labour (Regulation & Abolition) Act, 1970 to employ/supply clerical staff which is a skilled job as per Deptt. of Telecom orders. The respondent-management continues to employ casual workmen directly and also through contractors without first calling the workwoman. The services of the workwoman have been terminated illegally, arbitrarily and with mala fide intention as the claimant/workwoman had demanded payment of full legal wages from the management and the management has refused to accept any illegal cut in the wages. The workwoman regularly attended office, marked attendance, attended to the jobs assigned by the respondent-management and her subordinates and received payment during the period of employment. The workwoman was employed directly by the management and not through ay contractor. No appointment orders are issued by the management in respect of casual workers by the D.O.T. has framed a scheme at the instance of the Hon'ble Supreme Court to grant temporary status and ultimately regularized the casual workers. As per the rules framed and instructions issued by the D.O.T., the respondent-management is duty bound to maintain complete record including the seniority list in respect of the workmen employed by it as casual workmen, contract labour or in any other capacity. The remaining facts alleged in the replication are same as alleged in the claim statement as such, need not to be repeated again.

4. Claimant/workwoman Sweety Singla has submitted her affidavit and proved it as Ex.WW1 and also proved the documents pertaining to daily diary and Photostat copy of the attendance register mark as WW1/1 to WW1/4 and cross-examined by the learned counsel of the management.

5. Management has submitted affidavit of witness Baldev Kishan, CAO (Legal) as MW1 as well as witness Sanjeev Kumar, AGM (Admn.) as MW2 who were cross-examined by the learned counsel of the workwoman.

6. Heard the learned counsel of the workwoman Sh. Hitesh Verma as well as learned counsel of the management Sh. Anish Babbar and perused the file.

7. Before averting to the real controversy between the parties, it will be pertinent to mention that claim petition is earlier decided by my learned predecessor vide Award Dated 17.09.2005 against which Civil Writ Petition No.20930/2015 is preferred by the claimant/workwoman Sweety Singla which is ultimately decided by the Hon'ble Punjab & Haryana High Court vide its order dated 04.02.2020 with the observation that parties be given two opportunities each to lead evidence and award be decided preferably within 6 months but not later than one year from the receipt of the certified copy of the order. In pursuance of the order of the Hon'ble Punjab & Haryana High Court, opportunity is given to the workwoman to produce evidence but workwoman refused to give any evidence vide its statement dated 23.07.2020. Contrary to this, management has submitted the affidavit of Sanjeev Kumar, AGM(Admn.), Bathinda along with the agreement from the year 1994 to 1999 and has been cross-examined by the learned counsel of the workwoman.

8. The real controversy lies between the parties with respect to the relationship of workwoman with management. The issue as to whether the workwoman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workwoman to adduce evidence to prove factum of her employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that she had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.***

9. The first contention is regarding the claimant to be a workwoman even if he was appointed on job basis for a particular time or subject to regular appointment to the Post of Clerk. To my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, wherein the

Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

10. Learned counsel of the workwoman contended that payment of salary was made by the management as is alleged in the claim petition as well as affidavit filed and it was the management who virtually paid the salary. Learned counsel of the workwoman contended that all the documents are in possession of the management and in spite of the request made by the claimant/workwoman and order of the Tribunal, management did not submit any document relating to the engagement as well as salary by saying that it has no documents because workwoman was not directly engaged by the management. Question remains to be seen whether claimant/workwoman has proved that she was directly engaged by the respondent-management on 27.01.1997 and rendered her services till the alleged retrenchment/termination. This fact has to be proved by the documentary evidence as well as oral evidence. In order to prove that she was employed by the management directly workwoman has submitted her affidavit as Ex.WW1 and relied upon the documents filed as WW1/1 to WW1/4 pertaining to the daily diary and photocopy of the daily diary, attendance register. During the course of cross-examination by the management-counsel, this witness has stated that she worked in the office of GMT, Bhatinda as she was appointed by the GMT Bhatinda. As per her cross-examination she was working in the Dealing Section. She has specifically proved that she was working with Miss Sunita Mukundlal Shashtri, Miss Nirmala, Satish Kumar, Jasbit Singh. According to this witness, Mr. Satish Chand and J.S. Maan A.O. and Neelam Kumari were taking work from her. As per this witness Neemal Kumari was incharge of PCO Section. She has stated that she was getting Rs.1200/- to Rs.1300/- as her salary while aggrieved amount payable was Rs.2140/- per month. This witness has proved that she has worked for the management from 24.01.1997 to 31.12.1997 and her attendance used to be recorded in the office. The attendance used to be recorded by J.J. Maan and it was checked by AO Desraj. She has alleged that she has submitted Photostat copy of the original attendance register which is in the custody of the management. This witness has been lengthy cross-examined by the learned counsel of the management but nothing is brought on record against the facts alleged in petition as well as replication filed by her. She has specifically stated that she was maintaining the daily diary which was verified by the by the senior officials of the management and her work was such work which is done by the Clerk. She was directed note down the work which was done by her in the daily diary. She has specifically denied that she was engaged by the contractor as alleged in the written statement. She has further stated that she has rendered her services for 240 days with the management before her termination/retrenchment.

11. The factum of engagement of the workwoman Smt. Sweety Singla is also admitted by the witness of the management Baldev Krishan working as CAO Legal in the Bathinda Office of management. During the course of cross-examination, this witness has admitted that he has filed the Photostat copy of the documents of the daily diary which is Ex.A-1 attached with the affidavit. It is pertinent to mention that Ex.A1 Daily Diary which is also filed by the workwoman with her affidavit and proved as Ex.WW1/1 and WW1/2 along with attendance sheet. Thus, it becomes a proved fact that she worked as a Clerk in the office of management by virtue of the cross-examination of the management witness Baldev Krishan. Apart from this, the attendance-sheet attached with the affidavit of workwoman is also proved by her which is Ex.MW3/MW4. It is pertinent to mention that management has cleverly not submitted the attendance sheet of the workwoman which is duly verified by the officials of the management for the reason best known to the management.

12. Undoubtedly, in Tribunal, cases have to be decided on the basis of the preponderance of the probability and not the proof beyond reasonable doubt. Similarly, the Hon'ble Supreme Court in the case of ***Municipal Coruporation Faridabad Vs. Shri Niwas, Appeal (Civil) 1581 of 2009, decided on 13.09.2004*** has held that provisions of Indian Evidence Act in an adjudication, the general principles provided however, applicable. It is also in pray for the Industrial Tribunal to see that principle of natural justice are complied with burden of proof is on the claimant/workwoman. Learned counsel of the workwoman has contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s Bharat Heavy Electricals Ltd. Vs. State of UP Civil Appeal No.2461 of 1999 decided on 21.07.2003***, that adverse inference should be drawn against the

management for the non-production of the documents. Thus, as per the admission of the management witness namely Baldev Krishan and oral evidence and documentary evidence filed by the workwoman, it is beyond doubt that she has initial burden with respect to the onus that she was in the employment of management.

13. Contrary to this, BSNL-management in its written statement has not specifically denied nor admitted that she was working with the management directly or an employee of the contractor alleged in the written statement. The documentary evidence filed by the management in the form of Photostat copies in respect of registration and licence are ample proof that it was registered for engaging contractors for the work of establishment by the licencing-authority under the Contract Labour(Regulation and Abolition) Act 1960 and the contractor namely Ashok Kumar Garg was a registered contractor under the Contract Labour(Regulation and Abolition) Act 1960. But the question for consideration remains same i.e. whether she was engaged by the contractor as her halfheartedly alleged by the management in its written statement. In fact wording of the written statement is not clear to the extent that it is averred in the written statement that she might have been worked with the contractor during the relevant time. Learned counsel of the workwoman while placing reliance in the case of ***Angrejo Devi Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, CWP No.14256/12 decided on 13.11.2014*** as well as in the case of ***HMM Coaches Limited now M/s. HMM Infra Limited and others Vs. Presiding Officer, Labour Court, Abmala and another, Civil Writ Petition No.27578 of 2013 (O&M), dated 24.12.2015***, argued that there is no specific averment in the statement of the defence that workwoman has not directly employed or engaged by the management. Similarly, there is no specific averment in the written statement that she has not completed 240 days as required by Law. As per the learned counsel of the workwoman, if there is no specific denial of the facts alleged in the claim petition/rejoinder then it is admitted fact which is need not to be proved as per Section 58 of the Indian Evidence Act. The Hon'ble Punjab & Haryana High Court while dealing with the similar case of ***HMM Coaches Limited now M/s HMM Infra Limited and others Vs. Presiding Officer, Labour Court, Abmala and another, Civil Writ Petition No.27578 of 2013(O&M), dated 24.12.2015***, has held that what is not pleaded is not open to prove. As per the Hon'ble Punjab & Haryana High Court, if facts are not alleged in the pleading then question of its proof is not required under the Law.

14. Learned counsel of the management contended that there is specific pleading that that contractor namely Amarjeet Singh, Bajanda and Ashok Kumar Garg were engaged during the relevant time. It is proved by the witness of the management examined as Sanjeev Kumar, AGM Admn. In fact statement of Sanjeev Kumar is not of much relevance because he has stated during the cross-examination that his knowledge is based on the documents on record. According to this witness he has no any proof with respect to the engagement of workwoman through contractors. As per this witness, there is no register with respect to the engagement of the contractors maintained by BSNL-department. Apart from this, there is nothing on record which proved that workwoman was engaged by the contractor either in the form of oral evidence or documentary evidence. In fact, management has not produced the best evidence in its possession which should be brought on record to prove that workwoman had been employed by the contractor. For the sake of argument, if it is presumed that there was no direct relationship of employer and employee between the management and workwoman and the workwoman has been brought to work in the office of the management it still requires to maintain the prescribed registers and records pertaining to the contract labour as per the provisions of the Contract Labour (Regulation & Abolition) Act, 1960 (in short CLRA). I am of the opinion that management being the principal-employer was legally bound to maintain register of contractors and under legal obligation to prove that workwoman is not directly engaged by the management instead she had rendered her services under the contractor.

15. Learned counsel of the management Sh. Anish Babbar has vehemently contended that workwoman has not impleaded the alleged contractor as party in the claim petition as she was under obligation to implead the contractors as party so that best evidence could be produced before the Court to meet the ultimate justice. Learned counsel of the workwoman contended that the arguments of the learned counsel of the management is not legally tenable because it is his case that workwoman might have worked under the alleged contractors. Undoubtedly, the initial onus lies with the workwoman to prove that she was directly engaged through the management but the factum of her employment through contractor is alleged by the management as such, it was always open to the management to implead the alleged contractors as party and if they are not impleaded as party even then management is under legal liability to get their testimonies recorded by producing the alleged contractors for evidence. I am of the opinion that it was necessary on the part of the management to examine the alleged contractors as witness in order to prove that workwoman was employee of the contractor and not of the management. Hence, in the absence of production of the best evidence, adverse inference against the management is forgone conclusion in the light of the settled position of Law. No doubt in the case of ***Municipal Corporation Vs. Shri Niwas, Appeal (Civil) No. 1851 of 2002 decided on 06.09.2004,*** it is held that presumption for not production of the best evidence is always optional rather obligatory as is alleged by the learned counsel of the management but in given circumstances, adverse inference against the management is the only conclusion because of the non-impleadment of the contractors as a party or non-production of the contractor as witness specifically in the light of the statement of the management witness Baldev Kishan that

workwoman Sweety Singla was employed in the management-office and she prepared daily diary of the work which is filed as Photostat copy as Ex.A-1.

16. So far as the wages and salary of the workwoman is concerned, it is alleged in the claim petition that she was employed as Clerk and was drawing Rs.2140/- as monthly wages. During the course of cross-examination, she has stated that she was not paid Rs.2140/- per month and was paid only Rs.1200/- to Rs1300/- per month. As per this witness, she was getting Rs.2140/- per month is known to her by the officials of the workwoman. She has specifically stated that she has worked for the management from 27.01.1997 to 31.12.1997 regularly. She has stated in her affidavit that she worked for 338 days from 27.01.1997 to 31.12.1997 under BSNL-management i.e. more than 240 days in calendar year before her termination but no question has been put by the management-counsel with respect to the total working days of this witness with the management. Learned counsel of the management contended that factum of payment of salary by the management is not proved by the workwoman either through oral evidence or through documentary evidence. There is no doubt that nothing is on record in the form of documentary evidence that she was paid by the management but she has specifically alleged in its rejoinder that it was the dispute with respect to the actual payment of salary. The alleged termination come into existence as per the averment made in the rejoinder when she demanded payment of full wages from the management and she refused to any cut in the wages resulting dispute between her and management. In fact, it appears that the reason of her retrenchment/termination is the bone of contention between the actual payment and agreed payment with respect to the salary. In this connection, learned counsel of the workwoman has contended that payment of salary was subject to the control of the management and burden lies on the management to prove that she was not paid a single penny by the management specifically in the light of the proven fact of the employment of the workwoman with the office of management. As per the learned counsel of the workwoman, no one is going to serve for such a long time without payment of salary. I am of the considered view that if the engagement and services rendered by the workwoman with the management is proved then burden shifted upon the management to prove that she was not paid salary by management. Apart from this there is no evidence that she was paid by the contractor mentioned in the written statement for any month during the course of her services. It is noteworthy that factum of her 240 days service with the management before her termination is not specifically denied by the management. It is pertinent to mention that not a single question is asked to the workwoman during the course of cross-examination about rendering services of 240 days before her retrenchment/termination. There may be no dispute that burden is on the claimant/workwoman to prove a jurisdictional fact that she put 240 days of services as required by Law. But if the assertion of the workwoman is not denied by the management either in its written statement or in evidence then neither the question of burden nor onus is required to be discussed in detail. It is also noteworthy that management did not produce the best evidence in proof as she had not completed 240 days and it is suddenly fall upon the workwoman who was compelled by silence of the management to seek all the records when faced with the situation. What is to be noted is that the management did not take the lead to rely on its evidence based on record then by its act of non-production of the attendance and payment records serious suspicion is caused that everything was not alright in the management.

17. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that BSNL-establishment has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workwoman in fact was not the employee of the establishment as such, neither she is terminated by the BSNL-establishment nor such notices and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal (Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well as ***State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workwoman contended that workwoman was rendering her services with the management for a year and she had completed 240 days in the year 1997 before termination by the BSNL-establishment. As per pleading and affidavit of the workwoman she was terminated from 31.12.1997 without compliance of Section 25-F of the ID Act. Learned counsel of the workwoman contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s Bharat Heavy Electricals Ltd. Vs. State of U.P. and others, Civil Appeal No. 2459-61 of 1999 decided on 21.07.2003*** that adverse inference should be drawn against the management for the non-production of the documents regarding working days in establishment. Learned counsel of management relying in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas (supra),*** argued that presumption as to adverse inference for non-production of evidence is always optional rather obligatory as is alleged by the learned counsel of the workwoman. The Hon'ble Supreme Court in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas (supra),*** has held that provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication the general principle provides are however applicable. It is also in pray for the Industrial Tribunal to see that principal of natural justice are complied with the burden of proof is on the claimant/workwoman to

show that she had worked for 240 days in preceding 12 months prior to her alleged retrenchment/termination in terms of Section 25 of the Industrial Disputes Act, 1947.

18. So far as the argument of the learned counsel of the respondent regarding the establishment not being an "Industry" is concerned, I am of the opinion that the argument is not legally tenable as is held by several judgments of the Hon'ble Supreme Court. In this connection, the judgment of the Hon'ble ApexCourt in the case of ***Bharat Sanchar Nigam Ltd. Vs. Maan Singh, 2012(1), SCT page 641*** and in the case of ***All India Radio versus Santosh Kumar and other etc. Civil Appeal No.2423 of 1989 decided on February 5, 1998***, has held that Bharat Sanchar Nigam is an Industry. The Hon'ble Supreme Court specifically held that All India Radio is an 'industry' and it was observed in Para 4 of the judgment as follow:-

> **"Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(J) of the Act and the said definition is operative being applicable at present and as exiting on the Statute Book as on date."**

Thus, the contention raised by the learned counsel of the respondent-management that Telecom-department is not an 'industry' and the claimant/workwoman is not a workwoman under the Act is of no force.

19. The question which remains for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. It is admitted fact that neither notice was served upon the workwoman by the management nor retrenchment compensation was given to the workwoman. It is also admitted fact that there was no complaint regarding the service and conduct of the workwoman. Now the residual question is whether the claimant/workwoman is entitled to any incidental relief of payment of back wages and/or reinstatement with continuity of service. It is proven on record that workwoman was continuously in the employment of the management from her engagement till 31.12.1997 on regular basis. There is no show cause notice or memo issued to the workwoman by the management. Moreover, the job of the workwoman was of perennial and regular nature. Though, the workwoman has not pleaded anything about her post employment after retrenchment but she has alleged in her affidavit that she is unemployed from the date of her termination. The management has not pleaded and adduced any evidence to show that the workwoman was gainfully employed. Thus, nothing is brought on record by the management that workwoman was employed somewhere after her termination.

20. Learned counsel of the workwoman contended that in the given scenario, facts and evidences on record, it is crystal clear that respondent/management has retrenched the workwoman with highhandedness without giving notice or retrenchment compensation as such, she is entitled for reinstatement with continuity of service and entire back wages because she was forced to leave the job without any fault. Contrary to this, learned counsel of the management contended that nothing has been stated in the claim petition as well as affidavit filed by the workwoman with respect to her alleged post termination with respect to employment. Learned counsel of the management contended that workwoman was earning as usual by virtue of daily wager after termination as such, she is not entitled for any back wages. Learned counsel has placed reliance in the case of **"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya"** ***reported as (2013) 10 SCC 324*** and ***M/s. Caparo Maruti Ltd. Vs. P.O. Industrial Tribunal and another, LPA No.793/2016(O&M) in Civil Writ Petition No. 59/2014, dated 30.09.2019.***

21. Now the residual question is whether the claimant/workwoman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimant/workwoman was working in the management-establishment from 27.01.1997 to 31.12.1997. There is no legal show cause notice or charge-sheet issued to the claimant/workwoman by respondent/management. Moreover, the job of the claimant/workwoman to do Clerical is of perennial and regular in nature.

22. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under:-

> ***"The propositions which can be culled out from the aforementioned judgments are:***
>
> *(i)* ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> *(ii)* ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the***

existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

23. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as void ab initio, sometimes as illegal per se, sometime as nullity and sometimes as non-est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

24. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80,*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workwoman of her earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workwoman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workwoman must ordinarily lead to the reinstatement of the services of the workwoman alongwith payment of back wages.

25. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

26. So far as the facts and evidence of the case is concerned, it is not disputed that workwoman was alleged to be retrenched in the year 1999. Thus, more than 20 years has been passed in such cases, reinstatement is not possible as is held by the Ho'ble Supreme Court in the case o***f Gujarat State Road Transport Corporation and others Vs. Maluambra (1994) II, LLJ 552 as well as in State Steel Products Vs. Nagpal Singh and others, AIR 2001, SCW 2426***. The Hon'ble Supreme Court in its latest judgment in the case o***f State Uttrakhand and others Vs. Raj Kumar (2019) 14 SCC page 353***, has confirmed the above preposition laid down in the above mentioned cases.

27. Having regard to the legal position as discussed above and the facts that the claimant/workwoman herein was performing duties of regular and perennial nature, this Tribunal is of the firm view that the claimant/workwoman has been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that she has specifically pleaded that she is unemployed since her retrenchment/termination being M.com and doing household work only. Moreover, nothing has been asked from this witness regarding her employment/termination as such, the factum of her unemployment is unrebutted as management has not submitted any cogent evidence with respect to her future employment after the alleged retrenchment/termination. But looking the period of retrenchment, this Tribunal is of the opinion that compensation will be the appropriate remedy instead of reinstatement. Hence, lump sum amount of Rs.1.50 lac

will be appropriate remedy as compensation. Management is directed to pay the compensation amounting Rs.1.50 lac within three months from the notification of the award.

28. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

नई दिल्ली, 9 सितम्बर, 2021

का.आ. 609.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, भटिंडा (पंजाब) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री नरेश कुमार पुत्र राज कुमार, पुत्र श्री. एन.के. जीत, अध्यक्ष, टेलीकॉम लेबर यूनियन, मोहल्ला हरि नगर, लाल सिंह बस्ती रोड, भटिंडा (पंजाब) कामगार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण- सह- श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 269/2005) को जैसा कि अनुलग्नक में दिखाया गया है, प्रकाशित करती है जो केन्द्रीय सरकार को सॉफ्ट कॉपी के साथ 06.09.2021 को प्राप्त हुआ था।

[सं. एल-40012/433/99-आईआर-(डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 9th September, 2021

S.O. 609.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 269/2005) of the Central Government Industrial Tribunal - cum-Labour Court –II , Chandigarh, as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Telecom, Bhatinda (Punjab) and Shri Naresh Kumar S/o Raj Kumar, C/o Shri. N. K. Jeet, President, Telecom Labour Union, Mohalla Hari Nagar, Lal Singh Basti Road, Bhatinda (Punjab) Worker which was received along with soft copy of the award by the Central Government on 06.09.2021.

[No. L-40012/433/99-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 269/2005

Registered On:-06.03.2000

Naresh Kumar S/o Raj Kumar, C/o Sh. N.K. Jeet, President,
Telecom Labour Union, Mohalla Hari Nagar,
Lal Singh Basti Road, Bhatinda (Punjab)-151001. ...Workman

VERSUS

The General Manager, Telecom, Bhatinda (Punjab)-151001. ...Management

AWARD
Passed On:-12.08.2021

Central Government vide Notification No.L-40012/433/99/IR(DU) Dated 16.02.2000, under clause (d) of Sub-Section (1) and sub-Section (2A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial Dispute for adjudication to this Tribunal:-

"Whether the action of the management of General Manager, Telecom, Ferozepur in terminating the services of Sh. Naresh Kumar S/o Sh. Raj Kumar is legal and justified? If not, to what relief the workman is entitled and from which date?"

1. In brief, the facts are that the claimant was serving as workman in the office of J.T.O. Indoor Malout on a permanent job since 01.01.1996 and was drawing Rs.2138/- as monthly wage. The services of the workman were terminated on 05.03.1999 without notice, charge-sheet, enquiry and compensation. The termination of the services of the workman is illegal, null and void, against the provisions of the Industrial Disputes Act, 1947 and against the principles of natural justice. The juniors to the workman have been retained in service and even new hands have been recruited without calling the workman. The workman is unemployed since the termination of his services. A demand notice under Section 2-A of the Industrial Disputes Act, 1947 was served upon the respondent-management on 20.04.1999 wherein the workman was requested to take back him on duty with continuity of service, full back wages with interest and cost failing which the workman was to be liable for all legal consequences but respondent-management has refused to take back the workman on duty. It is therefore, prayed that the workman may kindly be reinstated with continuity of service and with full back wages along with interest and any other benefit which this Hon'ble Court may deem fit and proper.

2. Respondent-management filed its written statement, denying the fact that the workman was appointed by the management from 01.01.1996 and was being paid Rs.2138/-. The workman has not produced the record which may prove that he was paid monthly wages of Rs.2138/-. Neither any appointment letter has been issued to the workman nor he was the member of the service. The payment was directly made to the contractor and the department is having no record to reveal that the workman has actually worked with the erstwhile department. The contractor sometimes used to send one person or the other and no particular person has continuously worked with the department. As the workman was neither recruited nor appointed, the question of his termination w.e.f. 05.03.1999 does not arise. The workman cannot claim any relief against the erstwhile-department of Telecommunication Services which has been converted into a P.S.U. known as BSNL w.e.f. 01.10.2000. The workman was neither engaged/recruited by the management nor he has been the member of the service nor any appointment letter was issued so the question of termination of his service does not arise by the management. The workman was not recruited according to the recruitment rules by the management nor his services governed under the rules as applicable to the other employees. Therefore, the liability of the contractor cannot be passed on the management. Since the workman was never engaged nor terminated by the management therefore, question of granting any compensation, notice pay etc. does not arise. In view of the submission made above, it is respectfully prayed that the claim petition filed by the workman be dismissed with costs.

3. Workman filed replication to the written statement filed by the management, alleging therein that the workman was appointed by the management and was allotted work, supervised, controlled and paid by the management through his subordinate officers. The records of attendance, work done by the workman and the payments made to the workman are with the management. The contractor as alleged was nowhere in the picture. The said contractor, if any was merely a name lender, a shadowy figure. The termination of the workman was also done through verbal orders without complying with the provisions of the ID Act and the principles of natural justice. The workman worked continuously from 01.01.1996 to 05.03.1999 with the management in the office of JTO Indoor Malour and has completed more that 240 days service in each year. The remaining facts alleged in the replication are same as alleged in the claim statement as such, need not to be repeated again.

4. In support of his case, workman Naresh Kumar has filed its affidavit in evidence as Ex.WW1 and proved the documents i.e. duty chart of Telephone Exchange Malour Mark A-1 to A-6 and duty chart dated 27.02.1998 Mark B-1 and duty chart dated 31.01.1999 and 13.02.1999 as Mark C-1 to C-2. The workman has also examined witness Thakur Dass as WW2 and Harphool Singh as WW3 who has been cross-examined by the learned counsel of management.

5. Management has submitted affidavit of witness Prit Paul Singh, DET, BSNL as MW1 as well as affidavit of witness Dee Cee, JTO, GOB, in the O/o GMTD, BSNL, Ferozepur as MW2 who has also proved the documents M-1 and M-2 i.e. agreement for the year 1995 to 1997 and were cross-examined by the learned counsel of the workman.

6. Heard the learned counsel of the workman Sh. Hitesh Verma as well as learned counsel of the management Sh. Anish Babbar and perused the file.

7. Before averting to the real controversy between the parties, it will be pertinent to mention that claim petition is earlier decided by my learned predecessor vide Award Dated 17.09.2005 against which Civil Writ Petition No.20930/2015 is preferred by the claimant/workman Naresh Kumar which is ultimately decided by the Hon'ble Punjab & Haryana High Court vide its order dated 04.02.2020 with the observation that parties be given two opportunities each to lead evidence and award be decided preferably within 6 months but not later than one year from the receipt of the certified copy of the order. In pursuance of the order of the Hon'ble Punjab & Haryana High Court, opportunity is given to the workman to produce evidence but workman refused to give

any evidence vide its statement dated 23.07.2020. Contrary to this, management has submitted the affidavit of Dee Cee, J.T.O., Bathinda along with the agreement from the year 1995 to 1997 and has been cross-examined by the learned counsel of the workman.

8. The real controversy lies between the parties with respect to the relationship of workman with management. The issue as to whether the workman was engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that period to show that he had worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon'ble Supreme Court in case of ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.***

9. The first contention is regarding the claimant to be a workman even if he was appointed on job basis for a particular time or subject to regular appointment as workman. To my mind, the claimant is a workman within the definition of Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

10. Learned counsel of the workman contended that payment of salary was made by the management as is alleged in the claim petition as well as affidavit filed by the workman and it was the management who virtually paid the salary. Learned counsel of the workman contended that all the documents are in possession of the management and in spite of the request made by the claimant/workman and order of the Tribunal, management did not submit any document relating to the engagement as well as salary by saying that it has no documents because workman was not directly engaged by the management. Question remains to be seen whether claimant/workman has proved that he was directly engaged by the respondent-management on 01.01.1996 and rendered his services till the alleged retrenchment/termination. This fact has to be proved by the documentary evidence as well as oral evidence. In order to prove that he was employed by the management directly workman has submitted his affidavit as Ex.WW1 and relied upon the documents filed i.e. duty chart of Telephone Exchange Malour Mark A-1 to A-6 and duty chart dated 27.02.1998 Mark B-1 and duty chart dated 31.01.1999 and 13.02.1999 as Mark C-1 to C-2. During the course of cross-examination by the management-counsel, this witness has stated that he worked in the office of JTO Indoor Malout after his engagement by Sh. Prit Pal Singh, JTO of Telephone Exchange, Malout. This witness has specifically stated that he has no documents with respect to his appointment and termination letter issued by the management. According to this witness he was supervised and allotted work by JTO, Malout. According to this witness Sh. Harphool Singh who was assigning the job to him for testing even though he has no technical qualification for the telephone lines work. This witness has further stated that the payment was only made after getting his signature on the register. This witness has specifically denied the suggestion made by the management counsel that he was directly engaged by the contractor. So far as documentary evidence is concerned, document marked as W-2 bearing the signature of Bala Singh Sandhu, JTO. Workman Naresh Kumar has admitted that mark A-1 to A-6 does not bear the signature of any of the official of the department. It is true that these documents are Photostat copies of the original pertaining to the signature of the workman along with other persons engaged during the relevant time. The Photostat copies of the duty chart and jumper slips certainly indicates that workman was working with the management along with several other persons namely Vinod Kumar, Mukhtiar Singh, Smt. Krishan Kumari, Ram Jila, Ram Kishan, Surender Kumar. He has also stated in his affidavit that it was also part of his duty to start the stand by generator when the electric supply was disrupted during the duty period suitable entry to that extend has also been made pertaining to the period when he was employed in telephone exchange Malout.

According to this witness weekly duty chart was prepared by senior most TTA present in the exchange, showing the duty chart, duty hour of all the staff. It is pertinent to mention that nothing has been asked from this witness so far as the fats alleged in his affidavit regarding the duty chart, generator register of the telephone etc. are concerned.

11. The factum of workman's engagement with the management is also proved by the workman witness Harphool Singh who has been examined as WW3. This witness has stated that he knew the workman since his engagement by the management in June 1996. According to this witness, the workman was put on the job on testing the faults in main distribution frame in MDF. This witness has further proved that duty chart is prepared by the JTO and TTA and workmen working were connected with him at that time. This witness has specifically stated during the course of cross-examination that he used to convey the complaints of faults receipts at the window to Naresh Kumar after recording the same in the register and after checking the faults inside the exchange Naresh Kumar used to convey him back the outdoor faults. He admitted that workman was engaged as a casual labour and he was engaged through recruitment. According to this witness workman used to record the attendance on a different register from his own register. The important aspect of the evidence of the witness Harphool Singh is that he was working as Sr. TOA on Fault Research Service, Malout at the time of cross-examination meaning thereby he was working employee of the management. He has examined himself to prove the factum of engagement of workman with the management. There was no suggestion with respect to his affidavit as well as cross-examination that he was not an employee of management by the management counsel which also indicates the factum of his engagement with the management during the relevant time is not disputed as such, his evidence is trustworthy.

12. Undoubtedly, in Tribunal, cases have to be decided on the basis of the preponderance of the probability and not the proof beyond reasonable doubt. Similarly, the Hon'ble Supreme Court in the case of ***Municipal Coruporation Faridabad Vs. Shri Niwas, Appeal (Civil) 1581 of 2009, decided on 13.09.2004*** has held that provisions of Indian Evidence Act in an adjudication, the general principles provided however, applicable. It is also in pray for the Industrial Tribunal to see that principle of natural justice are complied with burden of proof is on the claimant/workman. Learned counsel of the workman has contended in the light of the judgment of the Hon'ble Supreme Court in the case of ***M/s. Bharat Heavy Electricals Ltd. Vs. State of UP Civil Appeal No. 2461 of 1999 decided on 21.07.2003***, that adverse inference should be drawn against the management for the non-production of the documents.

13. Contrary to this, BSNL-management in its written statement has not specifically denied nor admitted that he was working with the management directly or an employee of the contractor alleged in the written statement. The documentary evidence filed by the management in the form of Photostat copies in respect of registration and licence are ample proof that it was registered for engaging contractors for the work of establishment by the licencing-authority under the Contract Labour(Regulation and Abolition) Act 1960. But the question for consideration remains same i.e. whether he was engaged by the contractor as is half-heartedly alleged by the management in its written statement. In fact wording of the written statement is not clear to the extent that it is averred in the written statement that he might have been worked with the contractor during the relevant time. Learned counsel of the workman while placing reliance in the case of ***Angrejo Devi Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, CWP No.14256/12 decided on 13.11.2014*** as well as in the case of ***HMM Coaches Limited now M/s HMM Infra Limited and others Vs. Presiding Officer, Labour Court, Abmala and another, Civil Writ Petition No.27578 of 2013 (O&M), dated 24.12.2015***, argued that there is no specific averment in the statement of the defence that workman has not directly employed or engaged by the management. Similarly, there is no specific averment in the written statement that he has not completed 240 days as required by Law. As per the learned counsel of the workman, if there is no specific denial of the facts alleged in the claim petition/rejoinder then it is admitted fact which is need not to be proved as per Section 58 of the Indian Evidence Act. The Hon'ble Punjab & Haryana High Court while dealing with the similar case of ***HMM Coaches Limited now M/s HMM Infra Limited and others Vs. Presiding Officer, Labour Court, Abmala and another, Civil Writ Petition No.27578 of 2013 (O&M), dated 24.12.2015***, has held that what is not pleaded is not open to prove. As per the Hon'ble Punjab & Haryana High Court, if facts are not alleged in the pleading then question of its proof is not required under the Law.

14. Learned counsel of the management contended that there is specific pleading that workman might be engaged by the contractor during the relevant time which is proved by the witness of the management namely Prit Pal Singh, JTO, MW1 and Dee Cee, JTO, BSNL Ferozepur, examined as MW2 and Thakur Dass, MW3. So far as cross-examination of MW1 Prit Pal Singh, JTO is concerned, this witness has stated that he has no list of the labour supplied by the contractors. He has also admitted that at the time of providing wages to the labour some officials of the department might have been present. As per this witness, there is no record of casual labour in the department because record of the casual labour was not made by the department till 1999. This witness has specifically admitted that it is correct that log book and battery register are maintained by the department and contract labour is authorised to enter in the exchange. It is pertinent to mention that if log book and battery book are maintained for the purpose of starting the generator in the absence of electric and if these

documents are maintained then question arises why it is not produced by the management in spite of all the efforts made by the workman. Witness of management Dee Cee, JTO, MW2 is also of not very useful because the copy of contract filed by this witness pertaining to the period 1997 to 1999 and marked as Annexure M-1 to M-2. According to this witness the remaining agreement is not presently available with the management being old record. During the course of cross-examination, this witness has stated that he has no personal knowledge about the case and his knowledge is based on the documents available on record. According to this witness there is no evidence on record with respect to the contractors engaged by the management in the year 1993 and he has no any proof with respect to the engagement of workman through contractors because nothing such register maintained by the management of BSNL.

15. Learned counsel of the workman contended that there is no specific pleading about the name of the contractor engaged during the relevant time as such, statement of the management witness namely Prit Pal Singh and Dee Cee is not important because they have stated during the cross-examination that their knowledge is based on the documents available on record. As per the learned counsel of the workman, management has not produced the best evidence in their possession to prove that the workman had been employed by the contractor. For the sake of argument, if it is presumed that there was no direct relationship of employer and employee between the management and the workman and the workman has been brought to work in the telephone exchange, Malout, it still requires to maintain the prescribed registers and the records pertaining to the labour as per the provisions of Contract Labour(Regulation & Abolition) Act, 1970. No doubt Prit Pal Singh has at least stated that log book and battery book are maintained by the management. It is worthy of relevance that no department is going to succeed unless duties of the concerned-employees whether it is of management or contractors are prepared on daily basis or weekly basis. Claimant/workman has specifically not only submitted the relevant documents but also stated in his affidavit that weekly duty chart was prepared by the management. I am of the considered oinion that management has to examine at least any of the employee whose name has been mentioned in the duty chart filed by the claimant/workman to disprove the evidence given by the claimant/workman but no effort is made by the management for the reason best known to it. I am of the opinion that management being the principal-employer was legally bound to produce relevant documents maintained for filing of Telephone Exchange Malout as well as the register of contractors under legal obligation to prove that the workman was not directly engaged by the management and he rendered his services under the contractors.

16. Learned counsel of the management Sh. Anish Babbar has vehemently contended that workman has not impleaded the alleged contractor as party in the claim petition as he was under obligation to implead the contractors as party so that best evidence could be produced before the Court to meet the ultimate justice. Learned counsel of the workman contended that the arguments of the learned counsel of the management is not legally tenable because it is his case that workman might have worked under the alleged contractors. Undoubtedly, the initial onus lies with the workman to prove that he was directly engaged through the management but the factum of her employment through contractor is alleged by the management as such, it was always open to the management to implead the alleged contractors as party and if they are not impleaded as party even then management is under legal liability to get their testimonies recorded by producing the alleged contractors for evidence. I am of the opinion that it was necessary on the part of the management to examine the alleged contractors as witness in order to prove that workman was employee of the contractor and not of the management. Hence, in the absence of production of the best evidence, adverse inference against the management is forgone conclusion in the light of the settled position of Law. No doubt in the case of ***Municipal Corporation Vs. Shri Niwas, Appeal (Civil) No.1851 of 2002 decided on 06.09.2004,*** it is held that presumption for not production of the best evidence is always optional rather obligatory as is alleged by the learned counsel of the management but in given circumstances, adverse inference against the management is the only conclusion because of the non-impleadment of the contractors as a party or non-production of the contractor in the light of the documentary evidence as well as statement of the witness WW2 Harphool Singh.

17. So far as the wages and salary of the workman is concerned, it is alleged in the claim petition that he was employed as workman in the office of JTO Indoor, Malout and was drawing Rs.2138/- per month. He has stated in his rejoinder that he worked under the supervision and control and direction of the respondent and was paid by the respondent. Learned counsel of the management contended that factum of salary by the management is not proved by the workman from any documentary evidence. There is no doubt that nothing is on record in the form of documentary evidence that he was paid by the management. In this connection, learned counsel of the workman has contended that payment of salary was subject to the control of the management and burden lies on it to prove that he was not paid monthly wages by the management specifically in the light of the proved fact of employment of the workman in the office of the management. I am convince with the argument of the learned counsel of the workman that no one is going to serve for such a long time without any salary. Apart from this, there is no evidence that he was paid by the contractor mentioned by the management through his witnesses. It is noteworthy that factum of his 240 days with the management is not specifically denied by the management.

18. So far as the question pertaining to the non-compliance of the provisions of Section 25-F of the ID Act is concerned. It is not disputed that BSNL-establishment has neither issued any show cause notice nor given any compensation in lieu of notice as is envisaged under Section 25-F of the ID Act. Learned counsel of the management contended that workman in fact was not the employee of the establishment as such, neither he is terminated by the BSNL-establishment nor such notices and compliance of Section 25-F of the Act is required by the establishment. In this connection, learned counsel of the management has placed reliance in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas, Appeal (Civil) No.1851 of 2002, decided on 06.09.2004, Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan & Anr. Civil Appeal No.5969 od 2004, decided on 13.09.2004*** as well ***as State of Rajasthan, Manager RBI Bangalore Vs. S. Mani & Ors. Civil Appeal No.6306-6316 of 2003 decided on 14.03.2005.*** Learned counsel of the workman contended that workman was rendering his services with the management for a year and he had completed 240 days in the year 1999 before termination by the BSNL-establishment. As per pleading and affidavit of the workman he was terminated from 05.03.1999 without compliance of Section 25-F of the ID Act. Learned counsel of the workman contended in the light of the judgment of the Hon'ble Supreme Court in the case o***f M/s Bharat Heavy Electricals Ltd. Vs. State of U.P. and others, Civil Appeal No.2459-61 of 1999 decided on 21.07.2003*** that adverse inference should be drawn against the management for the non-production of the documents regarding working days in establishment. Learned counsel of management relying in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas (supra),*** argued that presumption as to adverse inference for non-production of evidence is always optional rather obligatory as is alleged by the learned counsel of the workman. The Hon'ble Supreme Court in the case of ***Municipal Corporation, Faridabad Vs. Siri Niwas (supra),*** has held that provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication the general principle provides are however applicable. It is also in pray for the Industrial Tribunal to see that principal of natural justice are complied with the burden of proof is on the claimant/workman to show that he had worked for 240 days in preceding 12 months prior to his alleged retrenchment/termination in terms of Section 25 of the Industrial Disputes Act, 1947.

19. There is no dispute that burden is on the claimant/workman to prove a jurisdictional fact that he put 240 days of services as required by Law. But if the assertion of the workman is not denied by the management either in its written statement or in evidence then neither the question of burden nor onus is required to be discussed in detail. It is specifically stated in replication that he has completed more than 240 days service in each calendar year from 01.01.1996 to 05.03.1999 before his termination without notice and any compensation. It is pertinent to mention that not a single question has been asked to this witness with respect to his 240 days working with management in preceding year from the date of alleged retrenchment. Moreover, if relationship of employer and employee is proved then legally burden lies on the management to prove that workman has not rendered his services for 240 days before retrenchment/termination. It is also noteworthy that management did not produce the best evidence to prove that he had not completed 240 days and it is suddenly fall upon the workman who was compelled by silence of the management to seek all the records when faced with the situation. What is to be noted is that the management did not take the lead to rely on its evidence based on record then by its act of non-production of the attendance and payment records serious suspicion is caused that everything was not alright in the management.

20. So far as the argument of the learned counsel of the respondent regarding the establishment not being an "Industry" is concerned, I am of the opinion that the argument is not legally tenable as is held by several judgments of the Hon'ble High Court. In this connection, the judgment of the Hon'ble Apex Court in the case of ***Bharat Sanchar Nigam Ltd. Vs. Maan Singh, 2012 (1), SCT page 641*** and in the case of ***All India Radio versus Santosh Kumar and other etc. Civil Appeal No. 2423 of 1989 decided on February 5, 1998***, has held that Bharat Sanchar Nigam is an Industry. The Hon'ble Supreme Court specifically held that All India Radio is an 'industry' and it was observed in Para 4 of the judgment as follow:-

> **"Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(J) of the Act and the said definition is operative being applicable at present and as exiting on the Statute Book as on date."**

Thus, the contention raised by the learned counsel of the respondent-management that Telecom-department is not an 'industry' and the claimant/workman is not a workman under the Act is of no force.

21. The question which remains for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. It is admitted fact that neither notice was served upon the workman by the management nor retrenchment compensation was given to the workman. It is also admitted fact that there was no complaint regarding the service and conduct of the workman. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement with continuity of service. It is proven on record that workman was continuously in the employment of the management from his engagement till 05.03.1999 on regular basis. There is no show cause notice or memo issued to the workman by the management. Moreover, the job of the workman was of perennial and regular nature. Though, the workman has not pleaded anything about his post employment after retrenchment but he

has alleged in his affidavit that he is unemployed from the date of his termination. The management has not pleaded and adduced any evidence to show that the workman was gainfully employed. Thus, nothing is brought on record by the management that workman was employed somewhere after his termination.

22. Learned counsel of the workman contended that in the given scenario, facts and evidences on record, it is crystal clear that respondent/management has retrenched the workman with highhandedness without giving notice or retrenchment compensation as such, he is entitled for reinstatement with continuity of service and entire back wages because he was forced to leave the job without any fault. Contrary to this, learned counsel of the management contended that nothing has been stated in the claim petition as well as affidavit filed by the workman with respect to his alleged post termination with respect to employment. Learned counsel of the management contended that workman was earning as usual by virtue of daily wager after termination as such, he is not entitled for any back wages. Learned counsel has placed reliance in the case of **"Deepali Gundu Surwase v. Kranti Junion Adhyapak Mahavidyalaya"** ***reported as (2013) 10 SCC 324*** and ***M/s Caparo Maruti Ltd. Vs. P.O. Industrial Tribunal and another, LPA No.793/2016(O&M) in Civil Writ Petition No.59/2014, dated 30.09.2019.***

23. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimant/workman was working in the management-establishment from 01.01.1996 to 05.03.1999. There is no legal show cause notice or charge-sheet issued to the claimant/workman by respondent/management. Moreover, the job of the claimant/workman is of perennial and regular in nature.

24. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under:-

> ***"The propositions which can be culled out from the aforementioned judgments are:***
>
> *(i)* ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> *(ii)* ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."***

25. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as void ab initio, sometimes as illegal per se, sometime as nullity and sometimes as non-est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

26. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80,*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workman must ordinarily lead to the reinstatement of the services of the workman alongwith payment of back wages.

27. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

28. So far as the facts and evidence of the case is concerned, it is not disputed that workman was alleged to be retrenched in the year 1999. Thus, more than 20 years has been passed in such cases, reinstatement is not possible as is held by the Ho'ble Supreme Court in the case of ***Gujarat State Road Transport Corporation and others Vs. Maluambra (1994) II, LLJ 552 as well as in State Steel Products Vs. Nagpal Singh and others, AIR 2001, SCW 2426***. The Hon'ble Supreme Court in its latest judgment in the case of ***State Uttrakhand and others Vs. Raj Kumar (2019) 14 SCC page 353***, has confirmed the above preposition laid down in the above mentioned cases.

29. Having regard to the legal position as discussed above and the facts that the claimant/workman herein was performing duties of regular and perennial nature, this Tribunal is of the firm view that the claimant/workman has been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that he has specifically pleaded that he is unemployed since his retrenchment/ termination. Moreover, nothing has been cross-examined from this witness regarding his employment/ termination as such, the factum of his unemployment is unrebutted as management has not submitted any cogent evidence with respect to his future employment after the alleged retrenchment/termination. But looking the period of retrenchment, this Tribunal is of the opinion that compensation will be the appropriate remedy instead of reinstatement. Hence, lump sum amount of Rs. 4.50 lac will be appropriate remedy as compensation. Management is directed to pay the compensation amounting Rs. 4.50 lac within three months from the notification of the award.

30. Let copy of this award be sent to Central Government for publication as required under Section 17 of the ID Act, 1947.

A. K. SINGH, Presiding Officer

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